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No. 97

# In the Supreme Court of the United States

OCTOBER TERM, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

THOMAS W. DANT, ET AL., CO-PARTNERS, DOING BUSINESS AS DANT & RUSSELL, LTD.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statute involved | 2 |
| Statement | 2 |
| Summary of argument | 5 |
| Argument | 8 |
| Introduction | 8 |
| I. The language and the statutory context of Section 9 (h) support the Board's conclusion that the affidavits for which that section provides are required to be on file when a complaint is issued, but not when a charge is filed | 11 |
| A. The statutory scheme | 11 |
| B. The grammatical structure of Section 9 (h) | 12 |
| C. The meaning of Section 9 (h) as evidenced by the statutory context in which it appears | 17 |
| II. The legislative history of Section 9 (h) supports the Board's conclusion that the requirements of that section must be fulfilled when the complaint is issued rather than when the charge is filed | 23 |
| A. The source of Section 9 (h) and the relevant language changes made to it before enactment | 24 |
| B. References to Section 9 (h) in the Committee Reports and on the floor of Congress | 30 |
| C. Consideration of the meaning of Section 9 (h) by the Joint Committee on Labor-Management Relations in 1948 | 35 |
| D. Congressional consideration given to the Board's construction of Section 9 (h) during the proposed amendments to the Act in 1949 | 39 |
| III. The Board's construction of Section 9 (h) fully effectuates its legislative purpose | 44 |
| IV. The construction of Section 9 (h) made contemporaneously with its enactment by the agency responsible for its implementation and administration should be judicially approved unless plainly erroneous | 51 |
| V. The issue in this case is not controlled by this Court's decision in the *Highland Park* case | 58 |
| Conclusion | 60 |
| Appendix A | 61 |
| Appendix B | 63 |
| Appendix C | 76 |
| Appendix D | 87 |

## CITATIONS

*Cases:*


| | Page |
|---|---|
| *American Bottling Company*, 99 NLRB, No. 59 | 54 |
| *American Communications Association* v. *Douds*, 339 U. S. 382 | 8, 47 |
| *Armour & Company* v. *Wantock*, 323 U. S. 126 | 59 |
| *Associated Press*, 61 N.L.R.B. 574 | 49 |
| *Bailey* v. *Richardson*, 182 F. 2d 46, affirmed, 341 U. S. 918 | 57 |
| *Bowles* v. *Seminole Rock and Sand Company*, 325 U. S. 410 | 56 |
| *Brewster* v. *Gage*, 280 U. S. 327 | 57 |
| *Carolina Mills*, 94 NLRB 1141, enforced, 190 F. 2d 675 | 10 |
| *J. I. Case Co., Bettendorf Works*, 89 NLRB 269 | 58 |
| *Clark Shoe Company*, 88 NLRB 989 | 58 |
| *Collett, Ex parte*, 337 U. S. 55 | 24 |
| *Crawford* v. *Burke*, 195 U.S. 176 | 23 |
| *Cuffman Lumber Company*, 82 NLRB 296 | 49 |
| *Danz* v. *Reconstruction Finance Corporation*, 193 F. 2d 1010 | 57 |
| *Edwards Brothers, Inc.*, 95 NLRB 1451 | 54 |
| *Fay* v. *Douds*, 172 F. 2d 720 | 18 |
| *First National Bank* v. *Missouri*, 263 U. S. 640 | 36 |
| *Fishgold* v. *Sullivan Corporation*, 328 U. S. 275 | 57 |
| *Fox* v. *Standard Oil Company*, 294 U. S. 87 | 30 |
| *Gemsco* v. *Walling*, 324 U. S. 244 | 35 |
| *Gillarde* v. *Martinelli*, 169 F. 2d 60 | 57 |
| *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204 | 23 |
| *Great Northern Ry. Co.* v. *United States*, 315 U.S. 262 | 36 |
| *H. & H. Mfg. Co.*, 87 NLRB 1373 | 10 |
| *John Hancock Mutual Life Insurance Co.*, 93 NLRB 778 | 49 |
| *Herman Loewenstein, Inc.*, 75 NLRB 377 | 14 |
| *Herzog* v. *Parsons*, 181 F. 2d 781, certiorari denied, 340 U. S. 819 | 12 |
| *Highland Park Mfg. Co.*, 84 NLRB 744 | 58 |
| *I. B. S. Manufacturing Company*, 96 NLRB 1263 | 54 |
| *Iob* v. *Los Angeles Brewing Company*, 183 F. 2d 398 | 18 |
| *National Labor Relations Board* v. *American Thread Co.*, 198 F. 2d 137, pending on certiorari, No. 459, this Term | 10, 44, 46, 58 |
| *National Labor Relations Board* v. *Augusta Chemical Company*, 187 F. 2d 63 | 46 |
| *National Labor Relations Board* v. *Capital Greyhound Lines*, 140 F. 2d 754, certiorari denied, 322 U. S. 763 | 56 |
| *National Labor Relations Board* v. *Geraldine Novelty Company*, 173 F. 2d 14 | 18 |
| *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748 | 46 |

Cases—Continued


| | Page |
|---|---|
| *National Labor Relations Board* v. *Grace Company*, 184 F. 2d 126 | 18 |
| *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322 | 3, 4, 8, 10, 47, 58, 59 |
| *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9 | 11 |
| *National Labor Relations Board* v. *Nina Dye Works*, 198 F. 2d 362, pending on certiorari, No. 460, this Term | 10, 23, 30-31, 44, 55 |
| *National Labor Relations Board* v. *Popper, Inc.*, 113 F. 2d 602 | 56 |
| *National Labor Relations Board* v. *Pratt, Read & Company*, 191 F. 2d 1006 | 46 |
| *National Labor Relations Board* v. *Public Service Co-or. Transport*, 177 F. 2d 119 | 18 |
| *National Labor Relations Board* v. *Tex-O.-Kan. F. Mills Co.*, 122 F. 2d 433 | 12 |
| *National Labor Relations Board* v. *Wiltse*, 188 F. 2d 917, certiorari denied, *sub. nom. Ann Arbor Press, Inc.* v. *National Labor Relations Board*, 342 U. S. 859 | 36 |
| *National Lead Company* v. *United States*, 252 U. S. 140 | 57 |
| *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11 | 55 |
| *Norwegian Nitrogen Company* v. *United States*, 288 U. S. 294 | 8, 36, 57 |
| *Packard Company* v. *National Labor Relations Board*, 330 U. S. 485 | 24 |
| *Postex Cotton Mill, Inc.*, 80 NLRB 1187 | 58 |
| *Ex parte, The Public National Bank of New York*, 278 U. S. 101 | 23 |
| *Rubin Brothers Footwear*, 99 NLRB, No. 100 | 54 |
| *Sanson Hosiery Mills, Inc.*, 84 NLRB 654, 92 NLRB 1102, enforced, 195 F. 2d 350, certiorari denied, No. 243, this Term | 18 |
| *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 | 6, 23 |
| *Shipowners' Association of the Pacific Coast*, 7 NLRB 1002 | 49 |
| *Southern Fruit Distributors*, 80 NLRB 1283 | 10 |
| *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534 | 57 |
| *United States* v. *Bowling*, 256 U. S. 484 | 36 |
| *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310 | 30 |
| *West Coast Telephone Company*, 66 NLRB 1073 | 49 |
| *West Texas Utilities Company* v. *National Labor Relations Board*, 184 F. 2d 233, certiorari denied, 341 U. S. 939 | 36 |
| *Wong Yang Sung* v. *McGrath*, 339 U. S. 33 | 36 |

*Statutes:*


| | Page |
|---|---|
| Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V, 141 *et seq.*): | |
| Title IV, Section 402.(7) | 36 |
| National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*): | |
| Section 3 (d) | 76 |
| Section 8 (a) (1) | 46 |
| Section 8 (a) (2) | 46 |
| Section 9 (c) (1) | 5, 13, 76 |
| Section 9 (e) (1) | 5, 9, 13, 15, 77 |
| Section 9 (f) | 9, 18, 20, 24, 25, 28, 31, 41, 43, 48, 52, 53, 78 |
| Section 9 (g) | 9, 18, 20, 28, 30, 48, 52, 80 |
| Section 9 (h) | 2, 5, 6, 7, 8, 12 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 30, 41, 42, 43, 47, 48, 80 |
| Section 10 (b) | 20, 44, 81 |
| Section 10 (c) | 5 |
| Section 10 (e) | 82 |
| Public Law 189, 82nd Cong., 1st Sess., 65 Stat. 601 | 9 |


*Miscellaneous:*


| | |
|---|---|
| 93 Cong. Rec. 1935 | 27 |
| 93 Cong. Rec. 3614 | 26 |
| 93 Cong. Rec. 3839 | 33 |
| 93 Cong. Rec. 4015-4016 | 29 |
| 93 Cong. Rec. 4767 | 32 |
| 93 Cong. Rec. 4894-5 | 25 |
| 93 Cong. Rec. 6381 | 32 |
| 93 Cong. Rec. 6444 | 25, 33, 34 |
| 93 Cong. Rec. 6447 | 25 |
| 93 Cong. Rec. 6452 | 32 |
| 93 Cong. Rec. 6455 | 32 |
| 93 Cong. Rec. 6497 | 32 |
| 93 Cong. Rec. 6499 | 32 |
| 93 Cong. Rec. 6516 | 32 |
| 93 Cong. Rec. 6534 | 32 |
| 93 Cong. Rec. 6860 | 25, 31, 32 |
| 95 Cong. Rec. 7718 | 40, 41 |
| 95 Cong. Rec. 7720 | 41, 42 |
| 95 Cong. Rec. 7790-1, 7794-6 | 42 |
| 95 Cong. Rec. 8717 | 42 |
| Davis, *Administrative Law* (West Pub. Co., 1951), pp. 203-204 | 57 |
| Hearings before the Joint Committee on Labor-Management Relations, 80th Cong., 2nd Sess., p. 1171 | 37 |
| H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), pp. 12, 46, 49, 50, 51-52 | 17, 25, 26, 31, 32 |
| H. R. 6149, 77th Cong., 1st Sess. (1941), pp. 7-9 | 27 |

*Miscellaneous*—Continued


Page

H. R. 725, 80th Cong., 1st Sess. (1947), p. 35 ..... 27
H. R. 880, 80th Cong., 1st Sess. (1947), pp. 21-22 ..... 27
H. R. 2175, 80th Cong., 1st Sess. (1947), pp. 3-4 ..... 27
H. R. 2748, 80th Cong., 1st Sess. (1947), p. 21 ..... 27
H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 26, 33, 65-67, 93 ..... 25, 26, 27
Kearns, *Non-Communist Affidavits Under The Taft-Hartley Act*, 37 Georgetown Law Journal 297 ..... 46
31 LRR 5 ..... 50
Mamet, *The Role of the Labor Lawyer in Labor Relations*, 3 Labor Law Journal 200, 201-202, 207 (March, 1952 ..... 50
Memorandum from the General Counsel of the National Labor Relations Board to the Staff, August 19, 1947, ..... 53, 55, 63
Min. Rep., S. 249, 81st Cong., 1st Sess. (1949), p. 75 ..... 42
National Labor Relations Board, Second Annual Report (1937), pp. 118-119 ..... 18
National Labor Relations Board, Thirteenth Annual Report (1948), p. 11 ..... 52
National Labor Relations Board, Sixteenth Annual Report (1951) Table 7, p. 299 ..... 12
National Labor Relations Board, *Summary of Section 9 (h) Problems*, in Report of Senate Subcommittee on Labor and Labor-Management Relations, "Communist Domination of Certain Unions," Part III, 82nd Cong., 2nd Sess. (1952), p. 6, fn. 21 ..... 49, 54, 55
Neufield, *The House of Labor* (Prentice-Hall, 1951), pp. 20-21 ..... 50
Report of Joint Committee on Labor Management Relations, S. Rep. No. 986, Pt. 3, 80th Cong., 2nd Sess. (1948), pp. 41-42, 42-43 ..... 38
S. 1264, 76th Cong., 1st Sess. (1939), pp. 17-18 ..... 27
S. 10, 78th Cong., 1st Sess. (1943), p. 10 ..... 27
S. 1307, 78th Cong., 1st Sess. (1943), pp. 4-5 ..... 27
S. 1642, 79th Cong., 1st Sess. (1945), p. 3 ..... 27
S. 55, 80th Cong., 1st Sess. (1947), p. 19 ..... 27
S. 859, 80th Cong., 1st Sess. (1947), pp. 3-4 ..... 27
S. 871, 80th Cong., 1st Sess. (1947), p. 4 ..... 15, 26, 27, 29, 35
S. 1126, 80th Cong., 1st Sess. (1947), pp. 23-24, 25 ..... 21, 29
S. 249, 81st Cong., 1st Sess. (1949), pp. 1-2 ..... 39, 41, 42
S. 249, Amendment of June 6, 1949, 81st Cong., 1st Sess., pp. 1-2 ..... 41
S. Rep. No. 105, 80th Cong., 1st Sess., pp. 10, 11, 25, 26 ..... 17, 31
S. Rep. No. 99, 81st Cong., 1st Sess., p. 58 ..... 39
Sutherland, *Statutory Construction* (3d ed., 1943), Sec. 4705 ..... 23
Taft, *Understanding Union Administration*, 24 Har. Bus. Rev. No. 2, p. 254 ..... 50

*Rules and Regulations:*

Page

National Labor Relations Board Rules and Regulations and Statement of Procedure, Series 6, 29 C. F. R.:
Section 101.3 ..... 55, 56, 84
Section 101.6 ..... 56, 85
Section 102.13 ..... 55, 56, 82
Section 102.52 ..... 56, 83

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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### OPINIONS BELOW

The opinion of the Court of Appeals is reported at 195 F. 2d 299 (R. 588-590). The findings of fact, conclusions of law, and order of the Board (R. 6-38, 50-56, 59-60) are reported at 92 NLRB 307, and 95 NLRB 252.

### JURISDICTION

The decree of the Court of Appeals (R. 590-591) was entered on March 20, 1952. The petition for a writ of certiorari was filed on June 2, 1952, and was

granted on October 13, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

## QUESTION PRESENTED

An unfair labor practice charge was filed by a union at a time when the officers of this union had submitted the non-Communist affidavits prescribed by Section 9 (h) of the National Labor Relations Act, as amended, but the officers of the Congress of Industrial Organizations, with which the charging union was affiliated, had not. The officers of the C. I. O. submitted their affidavits, however, before the General Counsel, on behalf of the Board, issued a complaint based upon the union's charge. The question presented is whether the Board may properly issue an unfair labor practice complaint at a time when the charging union is in full compliance with Section 9(h), notwithstanding that there was not such full compliance when the charge was filed.

## STATUTE INVOLVED

The statutory provision principally involved is Section 9 (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*). This provision and other relevant portions of that Act are set out in Appendix C, *infra*, pp. 76-82.

## STATEMENT

On July 18, 1949, the Company discharged two employees, Max Gassner and Henry J. Christopherson (R. 21; 71, 183, 432). Thereafter, on August 3, 1949, International Woodworkers of

America, Local 6-7, the bargaining representative of the Company's employees, filed a charge with the Board, alleging that the discharges violated Section 8 (a) (3) and (1) of the Act (R. 6-7, 59; Appendix D, p. 87, *infra*). There were on file with the Board at the time non-Communist affidavits executed by officers of the union, as described in Section 9 (h) of the Act. Affidavits executed by the officers of the C. I. O., of which the charging union was an affiliate, were not filed with the Board until December 22, 1949 (see note 2, *infra* p. 4).

On or about March 27, 1950, the General Counsel on behalf of the Board issued a complaint based on the charge filed by the union (R. 1-4, 7, 59). The customary proceedings were then held before a Trial Examiner and before the Board. On November 29, 1950, the Board issued its decision and order finding that the discharges were violative of the Act as alleged in the complaint, and directing the Company to take appropriate remedial action (R. 6-38, 50-56).

On June 6, 1951, after this Court had decided in the *Highland Park* case[1] that Section 9 (h) required the filing of affidavits by officers of parent federations like the C. I. O., the Company requested the Board to reconsider its order. In that request the Company urged, *inter alia,* that the Board "lacked jurisdiction to proceed with the case" because Section 9 (h) had not been fully complied with (R. 57-59).

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[1] *National Labor Relations Board* v. *Highland Park Manufacturing Company*, 341 U.S. 322 (May 14, 1951).

On July 17, 1951, the Board denied the Company's request for reconsideration (R. 50-60). With respect to the Section 9 (h) contention, the Board held that the Section "requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge" (R. 60, n. 3). The Board found that on this interpretation the requirement of Section 9 (h) had been fully met:

> We have administratively determined that the charging union, as well as its parent federation, the Congress of Industrial Organizations, were in full compliance with the filing requirements of Section 9 (f), (g) and (h) of the Act substantially in advance of the issuance of the complaint in this proceeding [R. 59-60].[2]

The Board then petitioned the court below for enforcement of its order of November 29, 1950 (R. 576-582). The court, without reaching the merits of the unfair labor practice findings, set aside the Board's order on the ground that, under Section 9 (h), "the Board was not empowered to entertain the charge or to issue the complaint or the order" (R. 589). Relying, *inter alia*, on this Court's decision in *Highland Park*, 341 U. S. 322, the court below construed Section 9 (h) as prohibiting the

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[2] As this Court observed in the *Highland Park* case, the officers of the C. I. O. filed the affidavits prescribed by Section 9 (h) on December 22, 1949, about three months before the complaint herein was issued. According to the Board's administrative records and the opinion of the court below (R. 589), International Woodworkers of America, Local 6-7, was in compliance with Section 9 (h) both at the time the charge was filed and when the complaint issued.

issuance of any complaint unless the charging labor organization was in full compliance at the time its charge was filed. Since the officers of the C. I. O. were not yet in compliance at the time the charge in this case was filed, it followed, in the court's view, that Section 9 (h) barred issuance of the General Counsel's complaint after they came into compliance (R. 589-590).

## SUMMARY OF ARGUMENT

### I

Section 9 (h) imposes a condition, the filing of non-Communist affidavits by labor organizations, upon action by the Board in each of the three kinds of proceedings which the Board is authorized to conduct: representation cases under Section 9 (c) of the Act, union-shop election cases under Section 9 (e) (1) of the Act, and unfair labor practice cases under Section 10 (c) of the Act. A single clause—"unless there is on file with the Board an [non-Communist] affidavit executed contemporaneously or within the preceding twelve-month period"—fixes the time when affidavits must be on file in order to enable the Board to take the specified action in all three types of proceedings. This clause modifies the words "no investigation" in representation cases, "no petition" in union-shop elections, and "no complaint" in unfair labor practice cases. Consequently, the section prohibits the Board from conducting an investigation in representation cases, from entertaining a petition in union-shop election cases and from issuing an un-

fair labor practice complaint unless the requisite affidavits are on file at the time any of these steps are taken by the Board.

To relate the "unless" clause to the charge rather than to the complaint, as does the court below, destroys the grammatical symmetry of Section 9 (h) and distorts its natural reading. That reading transforms the language "no complaint shall be issued," into "no charge shall be entertained." If Congress had desired to preclude the Board from entertaining charges rather than issuing complaints, it would undoubtedly have said so. Indeed, the very formula it used in prohibiting the Board from entertaining petitions for union-shop elections was available for this purpose. That Congress used different language to describe the different stages of the different proceedings to which the limitation applied shows the importance of reading the statute as Congress wrote it. "[S]o striking a change in expression could only have proceeded from a deliberate difference of intent." L. Hand, J., in *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 (C. A. 2).

## II

In the two changes of wording made in the compliance provisions prior to their enactment which are relevant to the question in this case, the draftsmen of Section 9 showed that the present language was intended to make the issuance of the complaint rather than the filing of the charge the stage of an unfair labor practice proceeding at which the re-

quired documents had to be on file. Similarly, on the two occasions subsequent to the enactment of Section 9 (h) when Congress considered the Board's construction which is now questioned before this Court, Congress apparently accepted the Board's reading of Section 9 (h) as warranted by the statutory language.

## III

Under the Board's construction of Section 9 (h), Communist-led unions derive no benefits from the Act. Filing of unfair labor practice charges by such unions only serves to emphasize to the employees they represent that the denial of Board assistance, which is dramatized by the General Counsel's dismissal of a charge for failure to file non-Communist affidavits, is the result of Communist leadership in those unions. Permitting labor organizations to file charges and thereby preserve their causes of action within the six-month limitation period does not confer upon non-complying unions any "benefit" which, so far as appears, Congress intended to deny them by Section 9 (h).

## IV

The Board's reading of Section 9 (h) should be given great weight, for "it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making its parts work efficiently and smoothly while they are yet untried

and new." *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 315.

V

Contrary to the view of the court below, the issue in this case is not controlled by this Court's decision in *National Labor Relations Board* v. *Highland Park Manufacturing Co.,* 341 U. S. 322.

ARGUMENT

**Introduction**

Section 9 (h) of the Act constitutes the legislative method adopted by Congress in 1947 to eliminate Communist leadership from labor unions. By disabling unions whose officers did not execute non-Communist affidavits from enjoying the benefits of the Act, Congress hoped to "make it difficult for [those] unions to remain effective," and to "exert * * * pressures on unions to deny office to Communists * * *," *American Communications Association* v. *Douds,* 339 U.S. 382, 390, 393. Accordingly, the following procedural limitations were written into the Act (Section 9 (h)):

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board

> [a non-Communist] affidavit executed contemporaneously or within the preceding twelve-month period by each officer * * *."[3]

Manifestly, this section deprives the General Counsel of authority to issue a complaint unless the charging union has complied with the affidavit filing requirements. The Board has implemented this provision, together with its companion provisions, Section 9 (f) and (g), by providing forms and prescribing procedures which must be followed by the charging union before a complaint will issue. While these procedures are discussed more fully below, pp. 51-55, it suffices to note here that under no circumstances will a complaint issue setting the Board's machinery in motion unless the affidavits are on file. The Regional Office will receive a charge from a non-complying union, but the charge will be dismissed for want of compliance unless within ten days after the filing the charging union has come into compliance or made a reasonable showing that it is taking the necessary steps in that direction. In the latter event, the Regional Office will retain the charge, but the case will not be subject to the usual investigation or processing, and no complaint will issue until full compliance has been achieved.

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[3] Subsequent to the Board's decision here, the provisions for holding union-shop elections under Section 9(e)(1) were eliminated from the Act, and in conformity therewith, the reference to union-shop petitions was deleted from Section 9(h). Public Law 189, 82nd Cong., 1st Sess., 65 Stat. 601. This case, of course, is controlled by the provisions of Section 9(h) as originally enacted, from which the portion quoted in the text is taken.

Consequently, unlike the situation in the *Highland Park* case, *supra*, the Board's construction of the statute in no way obviates or minimizes either the necessity for, or the number of, non-Communist affidavits. No union not in full compliance can obtain the use of the Board's machinery. The difference between the Board and the court below goes only to the time the affidavits must be filed. The question is whether the statutory condition precedent to the issuance of a complaint is satisfied by compliance at the time of the issuance of the complaint, or whether there must be compliance at the time of the filing of the charge.

The court below and two other courts of appeals[4] have held that Section 9 (h) does not permit the issuance of a complaint unless the necessary affidavits are on file when the charge is made. The Board, on the other hand, has consistently held that this Section "requires compliance at the time of the issuance of the complaint, rather than at the time of the filing of the charge" (R. 60, n. 3).[5] With deference to the views of the courts which have disagreed with the Board, we believe that the Board's construction (1) is required by the plain language of the statute; (2) is supported by the

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[4] *National Labor Relations Board* v. *Nina Dye Works*, 198 F. 2d 362 (C.A. 3); *National Labor Relations Board* v. *American Thread Co.*, 198 F. 2d 137 (C.A. 5). Petitions for certiorari have been filed in both cases, Nos. 460 and 459, this Term. No other courts have passed on the question.

[5] In support of its holding in this case, the Board cited its previous rulings in *Southern Fruit Distributors*, 80 NLRB 1283, and *H. & H. Manufacturing Co.*, 87 NLRB 1373. See also, *Carolina Mills*, 92 NLRB 1141, enforced without discussion of this point, 190 F. 2d 675 (C.A. 4).

legislative history of the filing provisions; (3) effectuates the Congressional purpose to put pressures upon unions to rid themselves of Communist leadership by denying them benefits under the Act, as Congress intended; and (4) should be sanctioned in view of its reasonableness and its long and consistent application by the administrative agency responsible for providing for the successful operation of the provision.

## I.

### The Language and the Statutory Context of Section 9(h) Support the Board's Conclusion That the Affidavits for Which That Section Provides Are Required to Be on File When a Complaint Is Issued, But Not When a Charge Is Filed

#### A. The Statutory Scheme

The filing requirements of Section 9 were superimposed by Congress in 1947 on the familiar procedural framework pertaining to unfair labor practice cases which had been established in the original Wagner Act. The initial step in this procedure is the filing of a charge. This charge is not filed *by* the Board or any of its agents; it is filed *with* the Board by a person or a labor organization alleging that an unfair labor practice has been committed. Its function is "merely [to set] * * * in motion the machinery of an inquiry." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18. The Board "is not required by the statute to move on every charge; it is merely enabled to do so." *Ibid.* Consequently, the charge does no more than bring into play the authority of

the General Counsel to conduct a preliminary investigation into the allegations of the charge to determine whether they have *prima facie* substance and warrant invocation of the Board's remedial processes. Section 3 (d) of the Act. See also, *Herzog* v. *Parsons,* 181 F. 2d 781 (C.A. D.C.), certiorari denied, 340 U.S. 810. Charges which survive this initial screening, and are not disposed of on other grounds,[6] may become the basis for the issuance of a complaint if the General Counsel, in the exercise of his discretion, so decides. Accordingly, as the Court of Appeals for the Fifth Circuit has stated:

> The charges are addressed to the Board and are not cases at all. The case between the Board and the employer begins with the complaint prepared by the Board' [*National Labor Relations Board* v. *Tex-O-Kan F. Mills Co.,* 122 F. 2d 433, 437 (C.A. 5).]

B. The Grammatical Structure of Section 9 (h)

The limitations imposed on the Act's unfair labor practice procedure by Section 9 (h) provides that "no complaint shall be issued pursuant to a charge made by a labor organization * * * unless affidavit executed contemporaneously or within the preceding twelve-month period by each officer * * *." To reach its result in this case, the court below held that the "unless" clause of the language

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[6] A large majority of the charges filed are never litigated as unfair labor practice cases. In the fiscal year ended June 30, 1951, for example, 87.3 percent of such charges were disposed of by dismissal, adjustment, or otherwise. Sixteenth Annual Report of the National Labor Relations Board, Table 7, p. 299.

we have quoted requires that the affidavits be on file at the time the charge is filed rather than at the time the complaint is issued. This reading, we submit, distorts both the apparent meaning and the grammatical sense of the language.

To understand the grammatical functions of the "unless" clause in Section 9 (h), it must first be recognized that this modifying clause is not limited to unfair labor practice cases, but applies equally to representation cases conducted under Section 9 (c) and union-shop elections provided for in Section 9 (e) (1).[7] Specifically, the requirements of the "unless" clause must be satisfied as a prerequisite to three separate steps undertaken by the Board or the General Counsel, which are applicable respectively to the three distinct proceedings described; hence, the language, "no investigation * * *, no petition * * *, and no complaint * * *." It seems clear that the time at which the affidavit requirements of the "unless" clause must be met with respect to the first two kinds of proceedings are before the "investigation" and the

[7] In order better to visualize the structure of Section 9(h), we print below the applicable portions of that section with underscoring which emphasizes the three separate limitations it makes and the conditional "unless" clause which fixes the time at which the affidavits must be on file.

> *No investigation* shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, *no petition* under section 9(e) (1) shall be entertained, *and no complaint* shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, *unless there is on file with the Board [a non-communist] affidavit executed contemporaneously or within the preceding twelve-month period by each officer* * * *.

"petition," respectively. To preserve the symmetry of the draftsmanship of this provision, it necessarily follows that the time made critical for complaint proceedings is issuance of the "complaint," for the words "complaint," "investigation" and "petition" stand in parallel construction, and are modified in identical fashion by the "unless" clause that follows. The phrase "pursuant to a charge made by a labor organization", which under the reading of the court below is modified by the "unless" clause, is inserted in Section 9 (h), not for the purpose of limiting the time when affidavits are to be filed, but solely to make it clear that the limitation on complaints is restricted to charges filed *by* such organizations and does not apply to charges filed by individuals, or by employers *against* such organizations. The phrase thus follows the pattern established by the similar phrase in Section 9 (h) which applies to representation proceedings, "* * * raised by a labor organization under subsection (c) of this section * * *."[8] There is no such qualifying clause, nor is one needed, in the union-shop election provision, because all petitions for such an election will, of course, be filed on behalf of a union.

The evident purpose of the draftsmen of Section 9 (h) was to achieve economy of expression through use of a single modifying clause, the "unless" clause, to refer alike to the preceding key words which are related to it, and thus avoid the necessity of repetition. The careful choice of

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[8] Cf. *Herman Loewenstein, Inc.*, 75 NLRB 377, 382.

language and use of technical words peculiarly descriptive of the applicable Board procedures permit no other conclusion. The method of expression in Section 9 (h) cannot be a happenstance. Viewed in this light, it is significant that, having adopted the constructional pattern of "no investigation * * *, no petition * * *, and no complaint * * * unless * * *," Congress—assuming it intended the result reached by the Board—could scarcely have expressed it otherwise than in the language actually employed; to make its meaning any clearer, Congress would have been forced awkwardly to repeat its reference not only to "complaint" but also to "petition" and "investigation" after the word "contemporaneously."[9] If, on the other hand; Congress intended the result reached by the court below, making the time of the filing of the charge the decisive date for the filing of affidavits, that could easily have been accomplished by deleting the reference to "complaint" in Section 9 (h) and inserting in its stead a reference to entertaining or investigating a charge. Indeed, as we argue more fully below, pp. 22-23, this was the very pattern Congress had before it in the same section in connection with union-shop petitions under Section 9 (e). Rejecting that

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[9] Thus, retaining the structure of the first part of the Section, the "unless" clause would have had to read, "unless there is on file with the Board an affidavit executed contemporaneously *with the investigation, petition or complaint, as the case may be*, or within the preceding twelve-month period . . ." (Emphasis to indicate added wording.) Compare the wording of S. 871, from which the language of Section 9(h) apparently was adopted, discussed pp. 27-28, *infra*.

alternative, Congress demonstrated the reason for, and the controlling force of, the grammatical construction employed in Section 9 (h), which makes the date of issuance of the complaint rather than the date of filing of the charge the critical date for the filing of the affidavits.

Since the limitation imposed by Section 9 (h) goes to the issuance of a complaint rather than the entertaining of a charge, it is logical that the limiting "unless" clause should refer to the time the complaint is issued, and not to the earlier event of the filing of the charge. For if the date upon which the charge is filed is made critical, as the court below held, the statutory interdiction against issuance of a complaint is surplusage. There is no occasion for the statute to forbid the issuance of a complaint if the General Counsel is precluded from accepting the prerequisite charge. It is normally to be expected that when an event is conditioned on the performance of specified acts, the same event fixes the time when the conditions must be met. And here, we think it clear that the draftsmen of Section 9 (h), in making the issuance of a complaint, and not the filing of a charge, the event which is conditioned upon the filing of the requisite affidavits, adopted the normal device of making the time of the conditioned event, *viz.*, issuance of the complaint, the time at which the affidavits must be on file.

### C. The Meaning of Section 9 (H) As Evidenced By the Statutory Context In Which It Appears

From what we have already shown, it is apparent that Section 9 (h) limits the three different kinds of Board proceedings to which it applies in separate ways, using technical language in each case which has specific and significant relation to the special nature of the proceeding to which the language applies. In the case of representation elections, which are initiated by petitions filed with the Board, the limitation attaches to the investigation; with union shop elections, the petition itself may not be entertained; and in unfair labor practice cases, it is the issuance of the complaint which is conditioned upon the filing of the affidavits. The explanation for this careful differentiation may, we think, be found by reference to the procedural characteristics of each of these three separate proceedings, which make the differentiation appropriate.

Thus, in representation cases it is appropriate to prohibit the investigation of questions concerning representation, rather than entertainment of the petitions which initiate such cases, because of the Board's long-established "contract bar" rules, with which Congress was familiar and which it did not desire to disturb.[10] The effect of these rules, which seek to reconcile the dual statutory objectives of stability in a contractual bargaining relationship

[10] S. Rep. No. 105, 80th Cong., 1st Sess., 10, 11, 25; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 50.

and of opportunity for employees to change their bargaining representatives, is to limit the frequency of challenges to the representative status of an incumbent union, by permitting new representation questions to be raised before the Board only during a limited period near the expiration of an existing contract term. See, *e.g.*, Second Annual Report of the National Labor Relations Board, pp. 118-119 (1937); *Sanson Hosiery Mills, Inc.*, 84 NLRB 654, 92 NLRB 1102, enforced, 195 F. 2d 350 (C. A. 5), certiorari denied, No. 243, this Term.[11] Accordingly, it is extremely important to labor organizations which seek to replace existing representatives as the designated agents of the employees that they be able to file the petition for representation at the propitious moment with respect to the termination date of existing contracts. Otherwise they are foreclosed from having an election held until the succeeding contract has expired—perhaps two years later. As already noted, these principles were fully developed in 1947 when Section 9 (h) was adopted, and were expressly approved by Congress.

But, as we show more fully below, pp. 48-51, it is sometimes difficult, and even impossible, for unions to achieve compliance with the filing requirements

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[11] The principles of "contract-bar" have been judicially sanctioned as a "reasonable administrative ruling": *National Labor Relations Board* v. *Geraldine Novelty Co.*, 173 F. 2d 14, 17 (C.A. 2). See also, *Iob* v. *Los Angeles Brewing Co.*, 183 F. 2d 398, 404 (C.A. 9); *Fay* v. *Douds*, 172 F. 2d 720, 724 (C. A. 2); *National Labor Relations Board* v. *Grace Co.*, 184 F. 2d 126, 129 (C. A. 8); *National Labor Relations Board* v. *Public Service Co-op Transport*, 177 F. 2d 119, 124 (C.A. 3).

of Section 9 (f), (g) and (h) at any given time, or to remain in continuous full compliance thereafter; even unions whose established policy is to remain in compliance and which are completely free from suspicion of Communist leadership, have frequent lapses through no fault of their own. The draftsmen of the legislation must have realized that unless such unions and the employees who wish to be represented by them were to be denied the opportunity to initiate representation proceedings for long periods of time because of a temporary lapse from compliance during the relatively very brief interval when the contract bar rules permit such cases to be filed, it was necessary to allow petitions to be filed during a period of noncompliance, even though further steps were forbidden until the necessary documents were executed and on file with the Board. In this way, injury to legitimate unions which would soon be in compliance might be avoided, and at the same time no substantial benefit would accrue to Communist-led unions which, of course, could not comply. This was the scheme which Congress utilized.

The union-shop election procedure, on the other hand, involved no such difficulties or necessities for accommodation as those pertaining to representation cases. No investigation or hearing is called for; the Board's task is simply to conduct an election upon a proper showing made by the petition. No reason existed to permit the Board to accept petitions in these cases unless the petitioning union had complied with the Section 9 requirements, and the

limitation was written accordingly, *viz*, "no [union-shop] petition * * * shall be entertained."

Unfair labor practice cases, like representation cases, are affected by intervening statutory principles of which the draftsmen of Section 9 (f), (g), and (h) apparently took cognizance. For the Act, in Section 10 (b), imposes a six-month period of limitations on charges filed with the Board, but makes no such limitation upon the issuance of complaints based upon timely filed charges. The practical consequence of this provision to labor organizations is similar to that resulting from the impact of contract bar rules on the filing of representation petitions—in either case it is of the utmost importance that the initiating document be filed during the allowable interval. If non-compliance with the requirements of 9 (f), (g), and (h) were made fatal to such filing, cases would be subject to defeat because of a lapse from compliance even though the union involved both wished and was attempting in good faith to maintain itself in compliance. As we show, *infra*, pp. 50-51, this difficulty may be present in unfair practice cases even though the allowable interval in which to file a charge is six months. Two reasons for this are (1) the time consumed by the normal practice of employers and unions in attempting to settle disputes through negotiation and adjustment before resorting to litigation before the Board by the filing of a charge, and (2) the obvious fact that it is not always easy to unsaddle within a six-month period established Communist leadership and replace it with officers who

can and will sign the non-Communist affidavits. The construction of Section 9 (h) for which we contend avoids this difficulty in the same manner the contract bar problem is resolved in the representation procedure. Thus, filing of the charge permits the Board to preserve the unfair labor practice case for a reasonable time, as it does (see *supra*, p. 9), even though the charging union may have temporarily lapsed from compliance. At the same time no benefit results to unions which are Communist-led because the critical step of issuing a complaint is withheld until the requirements of Section 9 (h) have been satisfied, and, obviously, no Communist-led union gets any advantage from filing a charge which, under the Board's rules, is doomed to early dismissal unless a showing is made that prompt steps are being taken to eliminate the disqualified leaders. See pp. 44-45, *infra*.

It is true that the explanation which we have given for the differences Congress made in the application of Section 9 (h) to the three proceedings with which it deals was not discussed in the documents or debates which reflect the legislative history of this provision. In fact, so far as our research discloses, no express explanation for the exact wording of the filing provisions appears in the legislative history. But this is not surprising, for the language which now appears in the filing provisions of Section 9 was framed in unrecorded sessions of the Senate Committee which reported out S. 1126, the forerunner in the Senate of the 1947 amendments (see, *infra*, pp. 24-26), and was not

materially altered when it was inserted into Section 9(h). The persons responsible for the differentiations made by this Section thus were Senators whose membership on the Committee made them especially familiar with Board procedures and staff members of the Committee whose jobs require expertness in matters relating to the Board. Under these circumstances, we think it entirely reasonable to infer that the differences of language were intended to accommodate the Act's procedures in the manner that we have described; specifically, that Section 9 (h) was drafted to permit the filing of unfair labor practice charges by unions not in compliance at the time of filing, but to prohibit issuance of a complaint until compliance had been effected. Supporting this inference is the fact that there can be no other plausible explanation, except inadvertence, for the procedural differences of Section 9 (h). It would be strange indeed to ascribe to inadvertence the failure of the draftsmen of Section 9 (h) to make explicit the construction for which respondent contends. For the effect of respondent's reading of this section is to transform the language "no complaint shall be issued" to "no charge shall be entertained." And it is entirely clear that when Congress meant to limit the power of the Board "*to entertain*" a proceeding instituted by a noncomplying labor organization, it knew precisely how to say so, for it used those very words in the same section when dealing with union-shop elections, and the Ives bill, S. 871, from which the language of Sec-

tion 9 (h) was derived (pp. 25-27, *infra*), contained provisions that would have done the very same thing for complaint cases. See pp. 27-28, *infra*.

In short, Congress' enumeration of the three different kinds of proceedings in Section 9 (h), and its use of different words to describe the limitations applicable to each, furnishes "strong reasons for supposing that so striking a change in expression could only have proceeded from a deliberate difference of intent." L. Hand, J., in *Securities and Exchange Commission* v. *Collier*, 76 F. 2d 939 (C. A. 2). See also, *Crawford* v. *Burke*, 195 U.S. 176, 190. By giving no effect whatever to those differences, respondent's reading violates the "cardinal rule" that "significance and effect shall, if possible, be accorded to every word" and clause of a provision. *Ex parte The Public National Bank of New York*, 278 U. S. 101, 104.[12]

## II

### The Legislative History of Section 9(h) Supports the Board's Conclusion That the Requirements of That Section Must Be Fulfilled When the Complaint Is Issued Rather Than When the Charge Is Filed

One of the three courts of appeals which have disagreed with the Board in its construction of Section 9 (h), the Third Circuit in *National Labor Relations Board* v. *Nina Dye Works*, 198 F. 2d 362, petition for certiorari filed on November 20, 1952, No. 460, this Term, relies in part in reaching its

[12] Accord: *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U. S. 204, 208; Sutherland, *Statutory Construction* (3d ed., 1943), Sec. 4705.

conclusion on statements made on the floor of the Senate when Congress was considering the 1947 amendments to the Act. From what we have said in Point I, we believe that this is the kind of case where "there is no need to refer to the legislative history [because] the statutory language is clear." *Ex parte Collett*, 337 U. S. 55, 61.[13] But if additional light upon the meaning of Section 9 (h) is to be sought in its legislative history, we submit that this source, viewed in its entirety, confirms the Board's conclusion rather than that of the Third Circuit. For both the structural changes this provision incurred during its progress through Congress before passage and the express consideration given by Congress to the question here presented after the 1947 amendments had been in effect strongly support the view that Section 9 (h) contemplated that the non-Communist affidavits be on file when a complaint issues in an unfair labor practice case rather than when the charge is filed.

A. The source of Section 9 (h) and the relevant language changes made to it before enactment

The language which now appears in Section 9 (h), making the filing of non-Communist affidavits by union officers a condition precedent to the issuance of a complaint in an unfair labor practice case, is derived from an earlier version of the companion provision, Section 9 (f), which imposes

[13] See also *Packard Co. v. National Labor Relations Board*, 330 U. S. 485, 492.

filing obligations of a different character. This language was carried over to Section 9 (h) by House and Senate Conferees as a substitute for the provisions of the House and Senate bills dealing with Communism in union leadership, which were deemed unsatisfactory as written.[14] The House bill as reported from committee had forbidden the Board to certify a labor organization as bargaining representative under Section 9 (c) if any of its officers was "a member of the Communist Party * * *," and the Senate bill had been amended on the floor of the Senate to include a substantially identical provision.[15] The conferees felt that this method of handling the subject was "impractical" because inordinate delays might occur in representation proceedings "while determination was made as to whether a man was a Communist."[16] Accordingly, the affidavit technique was adopted, and the language structure of Section 9 (f) was utilized, making the affidavit filing requirement apply to complaint cases and union-shop elections as well as to representation proceedings.

From the foregoing it is evident that the manner in which Section 9 (f) was intended to operate is an accurate index to the intent that accompanied Section 9 (h), for which the former subsection provided the pattern. Turning to Section 9 (f),

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[14] H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 11, 12, 49.

[15] 93 Cong. Rec. 4894-4895; H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 33, 93.

[16] Senator Taft, explaining the Conference Report on the floor of the Senate, 93 Cong. Rec. 6447; see also 93 Cong. Rec. 6444, 6860.

its provisions are found substantially as they were finally enacted in S. 1126, as reported out of Committee on the floor of the Senate.[17] A financial reporting provision in a predecessor House bill was formulated along entirely different lines, imposing criminal penalties and making it an unfair labor practice for unions to fail to fulfill its requirements, and was discarded for the Senate version by the conferees.[18] Tracing further the origin of the structure of Section 9 (f) in the Senate Committee, it seems altogether likely that its terms were taken from S. 871, proposed by Senator Ives and referred to the Senate Committee on Labor and Public Welfare, which subsequently reported out S. 1126 containing the present Section 9 (f).[19] For although a variety of other proposals had been introduced both in the 80th and earlier congresses, to require labor unions to file operational and financial data, S. 871 is the only one which made such a requirement a condition of enjoying the Board's remedial processes in unfair labor practice cases. All other such proposals imposed criminal sanctions or merely disqualified noncomplying unions from being certified as exclusive bargaining agents under Section 9 (c) of

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[17] S. 1126, 80th Cong., 1st Sess. (1947), pp. 23-24.

[18] See H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 26, 65-67; H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), pp. 51-52.

[19] Senator Morse, a member of the Senate Committee on Labor and Public Welfare, stated on the floor of the Senate, when S. 1126 was reported out of committee, that he "wish[ed] to commend the Senator from New York [Mr. Ives] who introduced legislation on the floor of the Senate, much of which will be found in this bill." 93 Cong. Rec. 3614.

the Act.[20] The Ives bill, S. 871, parallels the present Section 9 (f), with one significant difference, which we italicize below (S. 871, 80th Cong., 1st Sess. (1947), p. 4):

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization (1) shall file *with its petition raising such question or making such charge, as the case may be*, a statement [containing various data].

As Senator Ives explained on the floor of the Senate upon introducing this proposal, its language explicitly required a labor organization "to file with its * * * *charge* a statement of the names and addresses of its officers," etc., 93 Cong. Rec. 1935 (emphasis added). Thus, S. 871 proposed the requirement for which respondent in this case contends. But the language in S. 871, which expressly made the filing of the charge the time

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[20] See, S. 55, 80th Cong., 1st Sess. (1947), p. 19; S. 859, 80th Cong., 1st Sess. (1947), pp. 3-4; H. R. 3020, 80th Cong., 1st Sess. (1947), pp. 26, 65-67; H. R. 2748, 80th Cong., 1st Sess. (1947), p. 21; H. R. 2175, 80th Cong., 1st Sess. (1947), pp. 3-4; H. R. 880, 80th Cong., 1st Sess. (1947), pp. 21-22; H. R. 725, 80th Cong., 1st Sess. (1947), p. 35; S. 1642, 79th Cong., 1st Sess. (1945), p. 3; S. 10, 78th Cong., 1st Sess. (1943), p. 10; S. 1307, 78th Cong., 1st Sess. (1943), pp. 4-5; H. R. 6149, 77th Cong., 1st Sess. (1941), pp. 7-9; S. 1264, 76th Cong., 1st Sess. (1939), pp. 17-18.

when the necessary reports were to be on file, was deleted from Section 9 (f) as reported by the committee, and the present language was substituted. Although we have been unable to find any express explanation for this change, this action by the committee is further evidence of the fact that the draftsmen of the filing provisions of Section 9 knew precisely how to make the time of filing the charge the time when the required documents had to be on file, if that was their purpose. (See *supra*, p. 15.) And their refusal to adopt language so plainly appropriate to that end, which they had before them, can reasonably be attributed, we think, to their rejection of the scheme which it specified in favor of the scheme the present language plainly describes as a matter of spontaneous reading and grammatical sense.

Another change made during the legislative consideration of the filing provisions, this one relating to Section 9 (g), also fortifies the conclusion that the Board's construction is correct. Section 9 (g), as now written, imposes an obligation on labor unions to keep current the information filed under Section 9 (g), and, like Section 9 (f) and (h) maintains disqualifications in representation cases, union-shop elections and unfair labor practice proceedings for failure to comply with its terms. Section 9 (g), however, was amended before enactment in one important respect. As reported from committee, this section read, in applicable part, "* * * and no complaint shall issue with respect to a

charge filed by a labor organization *processed in its behalf* under section 10 unless it can show that it has complied with its obligation under this subsection." S. 1126, 80th Cong., 1st Sess. (1947), p. 25. (Emphasis supplied.) The words "processed in its behalf" plainly indicate that the draftsmen contemplated that the showing of compliance was not necessary until the charge had been processed and the complaint was ready for issuance. This reading accords with that the Board now gives to the present Section 9 (g) as well as 9 (f) and 9 (h). It is true that the phrase "processed in its behalf" was deleted by the Senate, but analysis of the circumstances of that deletion quite clearly shows that the amendment in this instance was intended to remove a redundancy and not to make any substantive alteration in meaning. For the change in Section 9 (g) was voted by the Senate at the request of Senator Taft, chairman of the committee which reported the bill to the Senate, as one of a bloc of 29 amendments which were described by Senator Taft as "a number of typographical and clerical errors * * * technical in nature" about which there was "no question * * * whatever." 93 Cong. Rec. 4015. Other changes made by this group of amendments included corrections of misspellings and punctuation, grammatical improvements, insertions of obviously omitted words, and the like. 93 Cong. Rec. 4015-4016. Upon assurance from Senator Taft that no substantive changes were included, the amendments

were agreed to en bloc and without debate. *Ibid.* Accordingly, an intent to change the import of Section 9 (g) as it read prior to its amendment cannot be attributed to Congress. Rather, we think it clear that the amendment served only to delete an unnecessary phrase from language that was already thought to say what the phrase merely reiterated.

The two changes which we have discussed are the only alterations we have been able to discover which are relevant to the issue in this case and which were made during the legislative period when the present language of Section 9 (h) was being framed. The absence of any full explanation in the legislative history of the exact reasons for these changes of course limits their value as indices of Congressional intent. We nonetheless believe that the interpretations we give to these changes are reasonable ones, and that to the extent that language changes are helpful toward ascertaining the intention of the draftsmen,[21] there is a strong suggestion here that Section 9 was not meant to prescribe a condition precedent to the filing of the charge.

B. References to Section 9 (h) in the Committee Reports and on the floor of Congress

In the opinion in the *Nina Dye Works* case, *supra*, the Court of Appeals for the Third Circuit refers to Senator Taft's statement on the floor of

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[21] See *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 96; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318.

the Senate following the passage of the Act that the purpose of Section 9 (h) was to make the filing of the affidavits "* * * a condition precedent to use of the processes of the Board * * *" 93 Cong. Rec. 6860. The court then suggests that "in the Senator's opinion the charge [may] * * * be considered part of the processes of the Board." 198 F. 2d at 365.[22]

The statement upon which the court relies is only one of a great many such statements made during the legislative history which are descriptive of the general operation of the filing provisions. Thus, the House and Senate conferees observed that the necessary documents had to be on file in order for labor organizations to "have charges processed in their behalf," or to "invoke the processes of the act," or to be eligible "for making charges."[23] Similarly, the Senate report accompanying S. 1126 stated that unions were required to file the information called for in Section 9 (f) "in order to be eligible * * * [to] have charges processed in their behalf."[24] Like statements were made by Senators and Representatives in discussing the

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[22] The court in the *Nina Dye Works* opinion also relied (198 F. 2d at 365) upon a statement by Congressman Hartley, made, not on the floor of the House, but in a book published by the Congressman in 1948, upon his retirement from office. But it should also be noted that the author was then addressing himself only to the problem of whether the parent federations were required to comply, rather than to the critical date of compliance, which is the issue before the Court here.

[23] H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), pp. 51, 52.

[24] S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 26.

filing provisions during floor debate.[25] Significantly, such phrases as "processes of the Board" (p. 31, *supra*) or services of the Board" (93 Cong. Rec. 6497), used by committee reports and legislators to denote the Board action before which the necessary documents were to be filed, were employed interchangeably with the more general phrases, "benefits under the act,"[26] or "access to the powerful machinery of the Act."[27] It could be contended that the phrase "processes of the Board" could not refer to the charge, in determining when compliance was required, since the Board has nothing to do with the filing of the charge (*supra*, pp. 11-12), and that it is more likely that the term "processes" was used in the lawyer's sense of "legal process," *i.e.*, the "case" which begins with the General Counsel's issuance of a complaint (*ibid.*). However, we think a more realistic appraisal of the variety of expressions used in this connection, and the generality of their import, requires the conclusion that these expressions were intended to be descriptive in a broad sense of the impact of the filing provisions, but were not intended to specify their detailed technical operation. Certainly, there is nothing in them to suggest that they were directed to the precise problem now before this Court, the problem of identifying the exact time at which the documents were required

[25] See e.g., 93 Cong. Rec. 6497, 6499, 6516, 4767, 6455, 6381, 6860.

[26] H. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947), p. 46; and Senator Taft in 93 Cong. Rec. 6534.

[27] Senator Morse, 93 Cong. Rec. 6455. See also, 93 Cong. Rec. 6497, 6452.

to be filed. Viewed as terms of general description, we think they are wholly consistent with the Board's construction of the filing requirements of the Act. For the requirement that compliance be achieved before a complaint issues prevents effective access to the "processes of the Board," precludes in a very practical sense unions from having "charges processed in their behalf" (*infra*, pp. 54-55), and denies noncomplying unions the "benefits under the act."

In more specific language than that referred to above, Senator Taft in an analysis of the differences between the Senate bill and the Conference Report stated that "subsection 9 (f) and subsection 9 (g) require * * * labor organizations as a condition precedent to being recognized as representatives under section 9 or being permitted to file charges under section 10 * * * [to] file certain information."[28] Taken at face value, this statement signifies Senator Taft's concurrence with the view of the court below as to the time the filing of the necessary information is required. But there are at least two considerations which greatly minimize the reliance that can be placed on Senator Taft's statement. One is that in the paragraph following the one containing the language we have quoted, Senator Taft states in equally explicit terms that Section 9 (h) requires that the affidavits be on file when the complaint issues, thus making an apparent about-face in the direction of agreement with the Board's view.

[28] 93 Cong. Rec. 6444. See also 93 Cong. Rec. 3839.

Thus, he states, "the conference agreement provides that no * * * complaint [may be] issued unless the labor organization in question submits [non-Communist] affidavits," and he makes no reference to the filing of the charge.[29] The second reason for discounting the value of Senator Taft's remarks, insofar as they relate to the question here, is that they contain an obvious inaccuracy with respect to the time at which the filing obligation must be fulfilled in representation cases. For the Taft statement makes the filing requirement "a condition precedent to being recognized as representatives," whereas the statutory language indisputably specifies that the requirement is a prerequisite to an *investigation* in a representation case.

Senator Taft was, of course, fully versed in the provisions of the bill he sponsored. The fact that even he used such technically inaccurate language in discussing the bill makes clear, however, that the statements which we have discussed were not intended as technical guides to the mechanics of operation of the provisions by the Board's agents, but rather were directed toward explaining to persons less familiar with this legislation than himself the general effect and the purpose sought to be accomplished. The message of Senator Taft's statements is, we think, no more or less than that of all the statements made on the floor of Congress and in the committee reports which bear on the filing provisions; namely, that the general purpose and effect of these provisions is to impose a dis-

[29] 93 Cong. Rec. 6444.

ability on noncomplying unions with respect to representation cases, union-shop election cases, and unfair labor practice cases. To this extent such statements are accurate and have meaning. But, not being directed to the details of the mechanical operation of the filing provisions, they are of no substantial help in answering the question in this case.

Of all the events during the legislative history of the filing provisions, we believe the language alteration made by the Senate Committee in S. 871 and the amendment to Section 9 (g), both of which we have discussed, *supra*, pp. 27-30, afford the most reliable bases for inferences as to the legislative intent with respect to the time at which the necessary documents must be on file. But more reliable than any of the legislative history is, we repeat, the ordinary sense to be read from the statutory words themselves and their grammatical structure, both of which support the Board's decision in this case. "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco* v. *Walling*, 324 U. S. 244, 260.

C. Consideration of the meaning of Section 9 (h) by the Joint Committee on Labor-Management Relations in 1948.

Although the debates in Congress and the committee reports prior to the enactment of the filing provisions were not addressed to the precise ques-

tion now before this Court, Congress did consider this very question on two occasions thereafter. On both occasions, the Board's construction of Section 9 (h) was explicitly acknowledged by Congress and, as we shall show, was accepted as warranted by the statutory language. In these circumstances the post-legislative history of the provision in question constitutes a relevant factor in determining the original legislative meaning. See *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 276, 277; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 313-315; *First National Bank* v. *Missouri*, 263 U. S. 640, 658; *United States* v. *Bowling*, 256 U. S. 484, 488; but cf., *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 47.

The first of these post-legislative treatments of the question in this case resulted from the study and report of the Joint Committee on Labor-Management Relations in 1948. This Committee was created by Title IV, Section 402 (7) of the Labor-Management Relations Act, 1947 (referred to elsewhere in this brief as the 1947 amendments to the Act), to study and investigate "the administration and operation of existing Federal laws relating to labor relations." Its report and recommendations have been described as an "illuminating" source of "persuasive evidence" of congressional intent. *National Labor Relations Board* v. *Wiltse*, 188 F. 2d 917, 921, 923 (C. A. 6), certiorari denied, *sub nom. Ann Arbor Press, Inc.* v. *National Labor Relations Board*, 342 U. S. 859. See also,

*West Texas Utilities Co.* v. *National Labor Relations Board*, 184 F. 2d 233, 235 (C. A. D. C.), certiorari denied, 341 U. S. 939.

In discharge of its functions, the Joint Committee conducted hearings during the course of which the then General Counsel of the Board, appearing as a witness, directed the Committee's attention to the fact that Section 9 (h) did not require non-Communist affidavits to be filed until the complaint issued. As the General Counsel testified (Hearings before the Joint Committee, 80th Cong., 2nd Sess., p. 1171):

> Then, there is another question with reference to the staggered provisions of the effectiveness of 9 (f), (g), and (h). It will be recalled that no petition [in a representation case] may be processed. It may be filed and docketed, but held there until there has been that compliance. No complaint may be issued. That would carry with it the inference that a charge may be filed and investigation made if the General Counsel feels it is called for, but when it gets to that point, no complaint may be entertained.

After making this statement the General Counsel recommended to the Committee that the filing provisions be amended to forbid a charge from being "entertained" unless the necessary documents were on file, in order to require compliance by a labor organization before the passage of the six-month limitation period between the conduct com-

plained of and the filing of charges provided for by Section 10 (b) of the Act (*ibid.*).

In its final report, the Joint Committee discussed, in connection with the General Counsel's testimony, the separate stages of representation cases, union-shop elections, and unfair labor practice proceedings at which the filing of reports and affidavits was required by Section 9 (f), (g), and (h). Referring to the exact question in this case, the report stated that "by implication the statutory treatment of unfair-labor-practice charges requires [the General Counsel] to accept such charges from a noncomplying union, perhaps investigate them fully up to the point of issuing complaint, at which point they become dormant."[30] Further on, the report concurred in the General Counsel's recommendations that the statutory language be amended to forbid the "entertaining" of charges unless the charging labor organization had complied with the filing requirements.[31] Since the report apparently accepted the General Counsel's reading of the filing provisions as a correct interpretation of the statute, we think it clear that the Committee's recommended amendment, which would have had the effect of adopting the construction for which respondent contends, was prompted by the Committee's belief that a change in the statute was required to achieve the result contemplated by the amendment.

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[30] Report of the Joint Committee on Labor-Management Relations, S. Rep. No. 986, Pt. 3, 80th Cong., 2nd Sess. (1948), pp. 41-42.

[31] *Ibid.*, pp. 42-43.

D. Congressional Consideration Given to the Board's Construction of Section 9 (h) During the Proposed Amendments to the Act of 1949

In 1949 the Senate again considered a number of amendments to the Act reflecting a legislative construction of the text of the filing provisions which accords with that of the Board. The basic legislative proposal dealing with labor-management relations which was before the Senate at that time was S. 249, favorably reported out of the Committee on Labor and Public Welfare. This bill in effect "repeal[ed] the Taft-Hartley Act completely and reenact[ed] the National Labor Relations Act of 1935." S. Rep. No. 99, 81st Cong., 1st Sess. (1949), p. 58. However, many amendments were proposed to S. 249 on the floor of the Senate, several of which dealt with filing requirements substantially identical to those enacted in 1947, and which demonstrated a congressional awareness that the present statutory treatment fixes issuance of the complaint rather than receipt of the charge as the time at which the filing must be accomplished.

One of these proposed amendments to S. 249, introduced by Senator Humphrey for a group of nine Senators, was intended to amend Section 9 (f) of the Act by permitting the Board to investigate representation petitions filed by noncomplying unions, but to prohibit further steps until compliance had been achieved. At the same time, this amendment was intended to retain the Board's construction of the filing provisions which permitted issuance of a complaint when compliance had been

effected, even though the charging union was not in compliance when the charge was filed. As explained by Senator Humphrey (95 Cong. Rec. 7718):

> Under the present bill, also, the National Labor Relations Board is prohibited, when faced with a representation proceeding or an unfair labor practice, from making any kind of an investigation [in the representation case] or issuing any kind of a complaint in the [unfair labor practice case] until the financial filing requirements are met. * * *
>
> Our amendment suggests * * * that the Board be prohibited from actually issuing a notice of hearing or conducting an election of [*sic*] making a union certification of [*sic*] issuing a complaint until such time as the financial requirements are made, but it does not prevent the Board from making an investigation.

The applicable part of the amendment's text by which this result was to be accomplished reads as follows (95 Cong. Rec. 7718):

> The Board shall not issue notice of hearing or conduct an election on petition of an employer under this section or issue any complaint based upon a charge filed by an employer under subsection (b) of section 10 of this act unless such employer * * * shall have prior thereto filed [the required information].[32]

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[32] The quoted provision, unlike the present Section 9(f), applied to employers. Another part of the proposed amendment applied the same requirements to labor organizations. The only difference between the language used in these two companion provisions, apart from identification of employer or

The significance of this proposal lies in the fact that a substantial alteration of the language of Section 9 (f) was considered necessary to permit the Board to investigate representation petitions filed by non-complying unions, but no change of structure was deemed necessary to make the issuance of a complaint, and not the filing of a charge, the time for complying with the financial requirements. Clearly, it was the understanding of the sponsors of this proposal, which was subsequently agreed to by the Senate as an amendment to S. 249 (95 Cong. Rec. 7720), that the language of the present Section 9 (f), which concededly has the same effect as that in 9 (h), does not require compliance when an unfair labor practice charge is filed, but only at the time a complaint is issued.

Another amendment to S. 249, introduced on the floor of the Senate by Senator Douglas for a group of eight Senators, and agreed to by the Senate, imposed the non-Communist affidavit requirement of Section 9 (h), but changed the wording of that Section to fix explicitly the time of filing the affidavits to correspond with the filing of the charge. The applicable portion of this proposal read (Amendment of June 6, 1949, to S. 249, 81st Cong., 1st Sess., pp. 1-2):

> * * * and no complaint shall be issued pursuant to a charge made by a labor organization

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labor organization, is that the words "prior thereto," contained in the text above, did not appear in the provision directed to labor organizations. However, since one of the purposes of these provisions was to equate the filing requirements between employers and unions, no difference in operation can be attributed to this variation. See 95 Cong. Rec. 7718.

> or employer under Section 10 unless there is on file with the Board [non-Communist] affidavits * * * *executed contemporaneously with the filing of any petition or charge* * * *. [Emphasis added.]

The floor debate (95 Cong. Rec. 7790-7791, 7794-7796) on this proposal does not refer to the reasons for the change in its language as compared to that now in Section 9 (h) of the Act, but the change itself would appear to signify that the sponsors did not believe the present language of Section 9 (h) was sufficient for their purpose.

Neither of the above proposals, although they were accepted by the Senate as amendments to S. 249 (95 Cong. Rec. 7720, 7796), was included in the bill that finally passed that body. For before S. 249 came to a final vote, an amendment in the nature of a substitute bill was introduced by Senator Taft and adopted by the Senate. 95 Cong. Rec. 8717. This substitute bill consisted of recommendations contained in the minority report of the Senate Committee on Labor and Public Welfare on S. 249, and its treatment of the filing provisions reveals that its sponsors likewise understood the present wording of those provisions to require compliance as a condition precedent to issuance of complaints and not to the filing of charges. Thus, in order to adopt the construction which respondent attributes to the present Section 9 (h), the substitute bill found it necessary to change the language of that section to read, in applicable part, "* * * and no charge made by a labor organiza-

tion under Section 10 (b) shall be entertained unless [the non-Communist affidavits are on file]." Min. Rep., S. 249, 81st Cong., 1st Sess. (1949), p. 75. On the other hand, the present wording of Section 9 (f), dealing with the filing of operational and financial data, was left undisturbed (*id.*, p. 74). The difference thus made in the two sections can only be explained by an intent to have them operate differently, *i.e.*, to require filing of the non-Communist affidavits to be completed before a charge could be entertained, while the filing of the financial and operational reports was not to be necessary until issuance of the complaint. And, of course, the significance of this to the present case is that the sponsors of the substitute bill in retaining the present statutory language to make the date of the complaint rather than that of the charge the critical date for filing the financial information required by Section 9 (f), revealed their agreement with the Board's construction of these filing provisions, which are couched in the same language as Section 9 (h).

The substitute bill as passed by the Senate was not acted upon by the House, and thus did not become law. Nonetheless, the legislative developments relating to S. 249 which we have described are important for this reason: They show a consistent and uninterrupted legislative understanding and apparent agreement, following the enactment of the 1947 amendments, with the Board's construction of Section 9 (h). So far as we are aware, no voice was raised to say that the Board's reading did violence to the letter or the spirit of Section 9 (h) as written.

## III

### The Board's Construction of Section 9 (h) Fully Effectuates Its Legislative Purpose

The three courts which have disagreed with the Board's reading of Section 9 (h) have not addressed themselves in their opinions to the specific contentions we have thus far advanced in this brief. The opinions of two of these courts, those of the Third Circuit in the *Nina Dye Works* case and the Fifth Circuit in the *American Thread* case, suggest that their disagreement with the Board was impelled by the view that the Board's construction does not fulfill the Congressional purpose of Section 9 (h) because under it noncomplying unions are granted benefits of the Act which are not available if Section 9 (h) is read to require compliance at the time charges are filed.

It is, of course, true that under the Board's reading of Section 9 (h) a noncomplying union may file a charge and thereby satisfy the six-month period of limitations under Section 10 (b), whereas under the reading approved by the court below the noncomplying union cannot do so. Accordingly, the court's construction creates an additional sanction —which the Board's construction does not create— against noncomplying unions by in effect establishing a six-month period of limitations applicable to the filing of the non-Communist affidavits as well as to the filing of the charge.

But it is equally true that a noncomplying union can obtain no relief from the Act under the Board's

reading, for the remedial processes of the Act can only be invoked by the issuance of a complaint. Acceptance by the General Counsel of a charge, which is subject to prompt dismissal under the Board's rules unless reasonable assurance is given that the necessary affidavits will be filed (see pp. 54-55, *infra*), is of no assistance whatever to a charging party unless followed by the issuance of a complaint. To the contrary, we cannot see how any Communist-led union would find it advantageous to file such a futile charge, because the effect of the filing is simply to emphasize to the employees, when the General Counsel dismisses the charge for noncompliance (*ibid.*), that Communist leadership is responsible for the denial of the benefits of the Act. Indeed, under the Board's rules implementing the statutory provisions (*ibid.*), the employer is not even kept under substantial harassment by such a charge, for it is dismissed after ten days unless legitimate assurances of diligent compliance are promptly forthcoming.[33] Accordingly, from the standpoint of depriving noncomplying unions of the Act's benefits, the Board's construction does not operate any differently than that contended for by respondent. In both views, Board assistance is effectively withheld from noncomplying unions.

Moreover, we do not believe that the problem of statutory construction presented by this case may be answered by saying, as does the Court of Appeals

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[33] Under the reading of the court below, no such grace period for compliance would be possible.

for the Fifth Circuit in the *American Thread* case, (198 F. 2d at 138), that "the broad purpose of the Act covers both" a prohibition against the filing of a charge and a prohibition against issuance of a complaint unless compliance has been achieved. For the "broad purpose" of eradicating Communism from labor organizations might justify not only a requirement that unions be in compliance when they file charges, but a variety of other penalties, which might certainly discourage Communism in labor unions, but which just as certainly were not written into the Act by Congress. For example, Congress could have provided that employees who were members of Communist-led unions should be denied statutory protection against conduct which would otherwise be an unfair labor practice; it could have barred employers from recognizing or dealing with Communist-controlled unions; or it could have provided for withdrawal of the prohibition against employer support and domination of labor organizations (Section 8 (a) (2)) and coercion of employees (Section 8 (a) (1)) if the employer's purpose was to defeat unions whose leadership was Communist. Congress did not adopt any of these approaches.[34] Instead, the method it chose to attain its ultimate objective—"to 'wholly eradicate and bar from leadership in the American

[34] See *National Labor Relations Board* v. *Pratt, Read & Co.*, 191 F. 2d 1006, 1008, 1009 (C. A. 2); *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 749, n. 1, 751 (C. A. 9); *National Labor Relations Board* v. *Augusta Chemical Co.*, 187 F. 2d 63, 64 (C. A. 5); Kearns, *Non-Communist Affidavits Under the Taft-Hartley Act*, 37 Georgetown Law Journal 297, 300.

labor movement * * * adherents to the Communist party' "[35]—was to withhold Board assistance from Communist-led organizations in each of the three kinds of proceedings which the Board was authorized to conduct. In adopting this method Congress stated that its *specific purpose* in enacting Section 9 (h) was to "[exert] pressure on unions to deny office to Communists" by withholding Board assistance from noncomplying unions. *American Communications Association* v. *Douds*, 339 U. S. 382, 393. We submit that this purpose is eminently fulfilled by the Board's reading of Section 9 (h), which, by permitting a noncomplying union to preserve its cause of action by filing a charge within the six-months period of limitation, serves as a spur and aid to that union in achieving compliance by the lure of specific reward in a remedy before the Board in connection with a concrete case. At the same time, as we have shown, Communist-led unions can take no comfort from being permitted to file charges, since the Board's dismissal of such charges absent early compliance will only spotlight for employees the disability created by the Communist character of their leadership.

While the Board's reading of Section 9 (h) does not, therefore, really afford Communist-led unions the benefits of the Act, the construction of Section 9 (h) adopted by the court below, by its imposition of a six-months limitation period for achieving

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[35] *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322, 325.

compliance, might have the effect of preventing unions which are devoid of any Communist taint and which have a history of compliance with the filing provisions from bringing meritorious cases before the Board. The complexity and shifting nature of the operational and organizational matters which must be treated in the documents required by Section 9 (f), (g), and (h) present problems of compliance for all unions, and not merely for those whose leaders are Communists. It is not surprising, then, that Board experience has shown that the compliance status of most unions, including those whose leadership is completely free from any suspicion of disloyalty, fluctuates greatly throughout the year.[36] Election of new officers, other shifts of official personnel, changes in organizational structure, difficulties and delays in auditing financial statements or in obtaining information with respect to the many details which Section 9 (f) and (g) require, may make compliance at any given moment, or continuous compliance, a most difficult and sometimes an impossible task. This fluctuating character of a union's compliance status is illustrated by two tables set forth in Appendix "A", pp. 61-62, to this brief, based upon the records of the Board's Affidavit Compliance Branch. Table I shows that the number of unions which lapse from compliance from month to month ranges from a low of 7,931 to a high of 13,825. Table II shows that

[36] All of the major national and international labor organizations have now complied with the exception of the International Typographical Union and the United Mine Workers of America.

unions normally drop out of compliance for one reason or another as often as five times a year.

While lapses from compliance are thus normal among all unions for reasons wholly divorced from communism in their leadership or from any desire to avoid compliance, there are some unions and situations in which compliance status may be particularly difficult to maintain. This is true, for example, in cases where industry-wide bargaining is conducted by an international on behalf of employees belonging to numerous locals.[37] In such cases the Board requires compliance by all local unions within the bargaining unit as well as by their international which acts as employee negotiator for the entire unit. *Cuffman Lumber Co.*, 82 NLRB 296. The task in such cases of bringing all necessary locals as well as the international into compliance at one time, in view of the variables, some uncontrollable, at work in matters to which Section 9 (f), (g) and (h) relate, may require careful planning, an unhurried coordinaton of local union actions, and even some good luck as well.[38]

A similar situation exists with respect to a great

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[37] Instances of this practice are to be found among insurance companies, nationwide bakery chains, and the communications industries. See, *e.g.*, *John Hancock Mutual Life Insurance Co.*, 93 NLRB 778; *Associated Press*, 61 NLRB 574; *West Coast Telephone Co.*, 66 NLRB 1073; *Shipowners' Association of the Pacific Coast*, 7 NLRB 1002.

[38] See the Board's *Summary of Section 9(h) Problems*, printed in Report of Senate Subcommittee on Labor and Labor-Management Relations, entitled "Communist Domination of Certain Unions," Part III, 82nd Cong., 2nd Sess. (1952), p. 6, fn. 21.

number of loosely organized small unions, both independents and affiliates of internationals throughout the country. The complex (at least to them) character of the filing requirements may discourage attempts to achieve compliance status among such unions, although they have no problem of Communist leadership, unless there is a specific need to use the Board's facilities. Gathering the information required by the filing provisions may be time-consuming, particularly where the union's administration is neither a full-time operation nor, perhaps, an efficient one. As Professor Slichter recently observed (31 LRR 5, 11), "unions are loose organizations," particularly at the lower levels of union organization.[39]

In these cases where compliance is especially difficult, as well as in the normal case where compliance may be of uncertain duration, it is not always feasible or possible to file timely charges during a period of full compliance. Although the Act permits six months following the commission of an unfair labor practice in which to file a charge, as a practical matter the period may often be much shorter. For normally, of course, relationships between employers and employees, even as to possible unfair labor practices, are handled through negotiation and adjustment, not through litigation before the Board.[40] Indeed, the filing of a charge may provide an irritant that forecloses or endan-

[39] See also, Taft, *Understanding Union Administration*, 24 Harv. Bus. Rev. No. 2, p. 254; Neufeld, *The House of Labor* (Prentice-Hall, 1951), pp. 20-21.

[40] See Mamet, *The Role of the Labor Lawyer in Labor Relations*, 3 Labor Law Journal 200, at pp. 201-202, 207 (March 1952).

gers informal settlement. For these reasons, the propitious moment for the filing of a charge cannot always be tailored to fit into a period when neither full compliance nor the six-month limitation has expired. Accordingly, in such cases the requirement which respondent would impose by its reading of the Act would frustrate the Act's co-ordinate purpose of remedying unfair labor practices committed against unions which do not have Communist leadership and are willing to comply. The Board's reading, on the other hand, which permits charges to be filed by noncomplying unions, preserves cases for litigation upon the effecting of compliance within a reasonable period. See pp. 53-55, *infra*. We believe that this result adheres to the legislative intent, not only because it avoids penalizing unions whose opposition to Communism is unquestioned, but also because the additional penalty imposed by respondent's contention in no apparent way further advances the cause of encouraging employees to elect non-Communist officers.

## IV

### The Construction of Section 9(h) Made Contemporaneously With Its Enactment by the Agency Responsible for Its Implementation and Administration Should Be Judicially Approved Unless Plainly Erroneous

When the 1947 amendments to the Act were passed by Congress, the filing provisions of Section 9 (f), (g), and (h) confronted the Board with a myriad of problems of interpretation and implementation that required immediate solution if the legislative will was to be put into effect. Many

hundreds of representation and unfair labor practice cases were pending before the Board, and additional hundreds of petitions and charges postdating the effective date of the amendments could fairly be anticipated. National Labor Relations Board, Thirteenth Annual Report (1948), p. 11. If these cases were to be handled responsibly, as the Act contemplated, it was essential that the Board not only make early determinations respecting the impact of Section 9 (f), (g), and (h) on them, but, perhaps more importantly, that the Board at once establish appropriate machinery to permit the filing provisions to function. Procedures had to be devised to receive and maintain vast numbers of the 9 (h) loyalty affidavits which would be submitted by labor organizations in every part of the United States. Methods had to be adopted for assuring that the proper union officials filed the affidavits, that the jurat was properly executed, and that the necessary forms were made available. It was essential that a system be adopted for checking the compliance status of unions for possible lapses at the stages of Board proceedings made critical by the filing provisions of the Act, and for controlling the steps being taken on a case by Board personnel in accordance with current compliance status.

The problems relating to the administration of the filing requirements with respect to operational and financial data were similarly complex. For example, the functions of the Secretary of Labor provided for by Section 9 (f) and (g) had to be

coordinated with the Board actions made subject to filing of the specified documents with the Department of Labor. Procedures also had to be established for assuring that unions had furnished their members with financial reports, as provided by Section 9 (f) (B) (2).

Fundamental to these and many other administrative tasks which required completion before the Board could properly administer the filing provisions of the Act, was the ascertaining of the time, with respect to the appropriate Board proceedings, that the reports and affidavits had to be on file. This determination, which respondent now claims the Board made incorrectly, was an integral part of the initial establishment by the Board of the machinery for administration of the filing provisions. Accordingly, the then General Counsel of the Board, contemporaneously with the effective date of the 1947 amendments, notified the agency personnel who were responsible for handling compliance matters both in the regional offices and in Washington that "compliance with Section 9 (f), (g), and (h) is a condition precedent to either processing a 9 (e) (1) (A) petition, entertaining a 9 (e) (1) petition or issuing a complaint. It is *not* a bar to *receiving* a petition or a charge * * *."[41] The Board's construction reflected its

[41] Memorandum of August 19, 1947, from General Counsel of the Board to the Board's staff personnel. This memorandum, which is reprinted in Appendix B, p. 63, *infra*, illustrates the administrative problems that arose in the initial establishment of procedures necessary for the filing provisions to function, and the manner in which they were solved. Further docu-

spontaneous understanding of the plain meaning of the statutory language; there is no suggestion that anyone supposed at that time that Section 9 (h) could be read differently. Accordingly, the many thousands of unfair labor practice charges filed by labor organizations since the effective date of the 1947 amendments have been received whether or not the charging union had complied at that time, although compliance was made prerequisite to the issuance of a complaint in every case.[42]

Consonant with the Board's reading of the filing provisions, it was essential for purposes of administrative efficiency to adopt special procedures for handling petitions in representation cases and charges in unfair labor practice cases filed by noncomplying unions. Clearly it would not effectuate the policies of the Act to investigate representation questions on the basis of stale petitions, or to investigate the allegations of charges where there was no reason to believe that compliance would be achieved in order to permit the issuing of a complaint. Accordingly, it was determined that a ten-day period would be granted in all such cases following the filing of the petitions or charge, after

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mentation relating to the nature of the filing provisions in their administrative aspect may be found in the Board's *Summary of Section 9(h) Problems*, cited in n. 38, p. 49, *supra*.

[42] See the General Counsel's testimony before the Joint Committee, cited p. 37, *supra*. Board decisions reflecting this consistent ruling include, in addition to those cited in n. 5, p. 10, *supra*, *Edward Brothers, Inc.*, 95 NLRB 1451; *I. B. S. Mfg. Co.*, 96 NLRB 1263; *American Bottling Co.*, 99 NLRB No. 59; *Rubin Bros. Footwear*, 99 NLRB, No. 100.

which the proceeding would be dismissed.[43] This rule was qualified, however, by allowing a charging union to make a showing that it was making diligent efforts to come into compliance, in which case reasonable extensions of time might be granted.[44] These administrative rulings are reflected in the Board's Rules and Regulations and Statement of Procedure, 29 C. F. R., Secs. 102.13 and 101.3.

In the *Nina Dye Works* case, *supra*, the Third Circuit states (198 F. 2d at 364), that the Board's Rules and Regulations are "directly contrary" to the Board's construction of Section 9 (h) because they define compliance with that Section to require an affidavit "executed contemporaneously with the charge" (Board's Rules and Regulations, 6th Series, Sec. 102.13 (b) (2), 29 C. F. R. Sec. 102.13 (b) (2)). What the court overlooks, however, is that this definition was expressly limited to apply "for the purpose of these rules and regulations" (*ibid.*), and did not purport to construe the meaning of the statutory language. The reason for this definition, as we have indicated, was to encourage early compliance and avoid useless preliminary in-

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[43] Memorandum from General Counsel to staff, p. 63, *infra*. The Board's ten-day rule was observed in this case, even though compliance by the parent federation of the charging union did not occur until more than four months after the charge was filed. For, as the statute was understood by the Board when this case arose, compliance by the parent federation was not required by Section 9(h), and the ten-day rule was applied accordingly. See *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11. Thus, the Board was without authority to issue the complaint in this case only if, as respondent argues, Section 9(h) requires compliance at the time the charge is filed.

[44] Board's *Summary of Section 9(h) Problems*, cited in n. 38, p. 49, *supra*.

vestigation of charges which are never to result in prosecutions by issuance of complaints.[45]. However, as the Board has made clear in its Statement of Procedure, a ten-day grace period, which may be extended upon a proper showing, is given to charging unions to achieve compliance status. 29 C. F. R. Sec. 101.3. That the meaning we have stated is given by the Board to Section 102.13 (b) (2) of its Rules and Regulations is further evidenced by its consistent decisions on this question. See cases cited in footnotes 5 and 42, pp. 10, and 54 *supra*. And, of course, the Board's construction of its own Rules and Regulations is normally to be given controlling weight. *National Labor Relations Board* v. *Capitol Greyhound Lines*, 140 F. 2d 754, 759 (C. A. 6), certiorari denied, 322 U. S. 763; *National Labor Relations Board* v. *Popper, Inc.*, 113 F. 2d 602, 603-604 (C. A. 3); cf. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 414.

In sum, we have shown here that the Board's reading of Section 9 (h) was adopted contemporaneously with the effective date of that section as a part of the many rulings and their implementations which were essential to efficient functioning and administration of technical and procedural legislative provisions. The statutory language di-

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[45] For the same reason, Section 102.52 of the Rules and Regulations calls for compliance at the time of the filing of a petition under Section 9(c) of the Act in a representation case, although the Act plainly makes compliance in such a case necessary only as a prerequisite to an investigation. See also, Sec. 101.16 of Statement of Procedure, pp. 85-86, *infra*.

recting the Board to administer these provisions was highly specialized in its references to the Board procedures which were involved. The Board has carefully implemented that language, as it understood it, with an elaborate administrative structure which has proved an effective system for putting the statutory scheme into operation. Under these circumstances, the Board's reading of Section 9 (h) should be given "peculiar weight [for] it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315. See also, *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 549; *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, 290; *Bailey* v. *Richardson*, 182 F. 2d 46, 52 (C. A. D. C.), affirmed by an equally divided Court, 341 U. S. 918; *Gillarde* v. *Martinelli*, 169 F. 2d 60, 61 (C. A. 1); Davis, *Administrative Law* (West Pub. Co., 1951), pp. 203-204. This is particularly true here, where respondent's reading of Section 9 (h) depends on an ambiguity it would create in the statutory language by not limiting the "unless" clause of that Section to its grammatical function of modifying the phrase "no complaint."[46] See pp. 12-16, *supra*. Compare the Fifth Circuit's opinion in

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[46] See, *National Lead Co.* v. *United States*, 252 U. S. 140, 145-146; *Brewster* v. *Gage*, 280 U. S. 327, 336; *Danz* v. *Reconstruction Finance Corporation*, 193 F. 2d 1010, 1016 (E. C. A.)

the *American Thread* case, 198 F. 2d at 138. The Board's construction, on the other hand, eliminates this ambiguity, and as we have shown, permits an efficient handling of the filing provisions without affording statutory benefits to Communist-led unions. We respectfully submit, therefore, that the Board's reading should commend itself to judicial approval.

## V

### The Issue in This Case Is Not Controlled by This Court's Decision in the *Highland Park* case

The court below apparently rests its decision upon the opinion of this Court in *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 341 U. S. 322 (R. 589). In *Highland Park*, this Court held that the C.I.O. was a "national or international labor organization" within the meaning of Section 9 (h), and for that reason was required to file non-Communist affidavits as a prerequisite to the achievement of full compliance status by its affiliates. The wholly separate question presented here, which relates to the stage of an unfair labor practice proceeding at which Section 9 (h) requires compliance, was not before the Court in *Highland Park*. For in that case, unlike here, the CIO's compliance with Section 9 (h) occurred *after* the complaint had issued,[47] and the

[47] As the Board's decision reveals (*Highland Park Manufacturing Co.*, 84 NLRB 744, 749), the complaint was issued on January 10, 1949, twelve months before the CIO's compliance. Similarly, in all the other cases relied on by the court below (R. 589), the federation compliance occurred after the complaint had issued. See the Board's decision in *Postex Cotton*

Board did not even suggest, as its consistent rulings and practice make clear (*supra*, pp. 10, 53-54), that the obligation of Section 9 (h) was geared to any procedural step other than the complaint. There is, moreover, no indication from the manner in which the *Highland Park* case was presented to the Court that the Court was even made aware of the problem of the present case.

Consequently, we read the statement in the opinion—"While the C.I.O. officers have since filed the affidavits, they were not on file at any time relevant to this proceeding" (314 U. S. at 325)—as meaning only that a *complaint* which has been issued at a time when the charging union was not in compliance is not validated retroactively by subsequent compliance. For the same reason, we think that this Court was not addressing itself to the question now presented in its further statement that "The Board is a statutory agency, and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid" (*ibid.*). Moreover, as other portions of the opinion seem to show by their context, the Court appeared to use the word "entertain," with respect to complaints, in the technical sense of "issue." See 341 U. S. at 324. In short, we think the Court did not intend in the *Highland Park* case to decide this case either directly or by implication.[48]

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*Mill, Inc.*, 80 NLRB 1187, 1189; *J. I. Case Company, Bettendorf Works*, 89 NLRB 269; *Clark Shoe Company*, 88 NLRB 989, 991.

[48] Cf. *Armour & Co.* v. *Wantock*, 323 U. S. 126, 132-133.

## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed, and the case remanded to the Court of Appeals for further hearing on the Board's petition for enforcement.

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*Acting Solicitor General.*

GEORGE J. BOTT,
*General Counsel,*
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November, 1952.

## APPENDIX A

TABLE I—Over-all Experience of Labor Unions with Compliance with Section 9 (f), (g) and (h) for One Year Beginning July, 1951.

[Source: Official Records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

| Month and Year | Local Unions In Compliance (Number of Unions) | Local Unions Lapsed from Compliance (Number of Unions) |
|---|---|---|
| July 31, 1951 | 12,931 | 9,386 |
| August 31, 1951 | 13,898 | 8,638 |
| September 30, 1951 | 14,404 | 8,367 |
| October 31, 1951 | 14,368 | 8,048 |
| November 30, 1951 | 15,074 | 7,931 |
| December 31, 1951 | 14,066 | 9,060 |
| January 31, 1952 | 9,220 | 13,825 |
| February 29, 1952 | 10,969 | 11,784 |
| March 31, 1952 | 11,963 | 11,224 |
| April 30, 1952 | 13,403 | 10,255 |
| May 31, 1952 | 14,121 | 9,752 |
| June 30, 1952 | 13,465 | 10,752 |

TABLE II—Experience of Nine Representative Unions with Compliance with Section 9 (f), (g) and (h) During Calendar Years 1950 and 1951.

[Source: Official records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

| | 9 (h) | | 9 (f) and (g) | | |
|---|---|---|---|---|---|
| | In Compliance | Compliance Expiration date | In Compliance | Compliance Expiration date | Compliance Lapsed |
| Union A | | 1- 2-50 | | | |
| | 1-13-50 | 1-17-50 | 12-20-49 | 3-31-50 | 1- 2-50 to 1-13-50-9 (h) |
| | 1-16-50 | 1- 2-51 | 2- 7-50 | 12-31-50 | 1- 2-51 to 2-20-51-9 (h) |
| | 2-20-51 | 1- 7-52 | 2-20-51 | 3-31-51 | 12-31-50 to 2-20-51-9 (g) |
| | | | 3-26-51 | 12-31-51 | |
| Union B | | | 1- 1-50 | 3-31-50 | 6-30-50 to 7- 5-50-9 (h) |
| | 7- 5-50 | 6-30-50 | 3-14-50 | 12-31-50 | 6- 1-51 to 6- 5-51-9 (h) |
| | 6- 5-51 | 6- 1-51 | 12- 8-50 | 3-31-51 | 12-13-51 to 1 -4-52-9 (h) |
| | 10-22-51 | 10-24-51 | 3-16-51 | 12-31-51 | 12-31-51 to 1- 4-52-9 (g) |
| | | 12-13-51 | | | |
| Union C | 10-17-49 | | 10-17-49 | | |
| | 9- 7-50 | 6-30-50 | 9- 7-50 | 6-30-50 | 6-30-50 to 9- 7-50-9 (g) & (h) |
| | 8-14-51 | 6-30-51 | 8-14-51 | 6-30-51 | 6-30-51 to 8-14-51-9 (g) & (h) |
| | | 6-30-52 | | 6-30-52 | |

TABLE II—EXPERIENCE OF NINE REPRESENTATIVE UNIONS WITH COMPLIANCE WITH SECTION 9 (f), (g) AND (h) DURING CALENDAR YEARS 1950 AND 1951.—Continued.

[Source: Official records of Affidavit Compliance Branch, General Counsel's Office, National Labor Relations Board]

| | 9 (h) | | 9 (f) and (g) | | |
|---|---|---|---|---|---|
| | In Compliance | Compliance Expiration date | In Compliance | Compliance Expiration date | Compliance Lapsed |
| Union D | 4- 1-49 | | | | 12-31-49 to 3-14-50-9 (g) |
| | 3-14-50 | 1- 1-50 | 3-14-50 | 3-31-50 | 1- 1-50 to 3-14-50-9 (h) |
| | | | 3-21-50 | 12-31-50 | 12-31-50 to 1-25-51-9 (g) |
| | 1-25-51 | 1- 1-51 | 1-25-51 | 3-31-51 | 1- 1-51 to 1-25-51-9 (h) |
| | | 12-31-51 | 3- 1-51 | 12-31-51 | 12-31-51 to 2- 8-52-9 (g) |
| Union E | 10-31-49 | | 11-23-49 | | |
| | 10- 4-50 | 10-10-50 | 2-21-50 | 2-28-50 | 12- 7-50 to 12-15-50-9 (h) |
| | 10- 9-50 | 10-24-50 | 11- 2-50 | 11-30-50 | |
| | 12-15-50 | 12- 6-50 | 12-20-50 | | |
| | 10-19-51 | 9-15-51 | 11-19-51 | 2-28-51 | 9-17-51 to 10-19-51-9 (h) |
| | | 9-14-52 | 12-28-51 | 11-30-51 | |
| | | | | 2-28-52 | |
| | | | | 11-30-52 | |
| Union F | 10-27-49 | | 12- 8-49 | | |
| | 11-14-50 | 10-18-50 | 2-14-50 | 3-31-50 | 10-19-50 to 11-14-50-9 (h) |
| | | | | 12-31-50 | |
| | 12- 3-51 | 10-28-51 | 1- 2-51 | 3-31-51 | 10-19-51 to 12- 3-51-9 (h) |
| | | 10-31-52 | 1-29-51 | 12-31-51 | |
| Union G | 1- 5-50 | 12-21-50 | 1- 5-50 | 12-31-50 | 1- 1-50 to 1- 4-50-9 (g) & (h) |
| | 1- 2-51 | 1- 2-52 | 1- 2-51 | 12-31-51 | 12-22-50 to 1- 1-51-9 (h) |
| Union H | 7- 8-49 | | 10-13-49 | | |
| | 1-23-50 | 1- 9-50 | 10- 2-50 | 9-30-50 | 1-10-50 to 1-22-50-9 (h) |
| | | | | | 10- 1-50 to 10- 2-50-9 (g) |
| | 1-25-51 | 1-17-51 | 10- 9-51 | 9-30-51 | 1-18-51 to 1-24-51-9 (h) |
| | | 1- 7-52 | | 9-30-52 | |
| Union I | 4-11-49 | | 12- 2-49 | | |
| | 3-16-50 | 1-14-50 | 3-23-50 | 3-31-50 | 1-14-50 to 3-16-50-9 (h) |
| | | | | 12-31-50 | 12-31-50 to 1-30-51-9 (g) |
| | 4-20-51 | 1-13-51 | 1-30-51 | 3-31-51 | 1-13-51 to 4-20-51-9 (h) |
| | | 1-12-52 | 2-14-51 | 12-31-51 | |

Union A—District Lodge No. 49, Machinists, AFL
Union B—Local 2058—Steelworkers, CIO
Union C—Local 2606—Carpenters, AFL
Union D—Lodge 1183—Machinists, AFL
Union E—Int'l. Alliance Bill Posters, Billers & Distributors, AFL
Union F—United Assoc. of Office, Sales & Technical Employees, Ind.
Union G—Lodge 1898, Machinists, AFL
Union H—Local 385—Meat Cutters, AFL
Union I—Local 111—Bakery, AFL

APPENDIX B

G. C. (Field) No. 2.
August 19, 1947.

To: The Staff.
From: The General Counsel.
Subject: Instruction regarding compliance with Department of Labor registration requirements and submission of loyalty affidavits (Subsections 9 (f) (g) and (h)).
Attachments: (a) Affidavit form NLRB 1080.
(b) Affidavit form NLRB 1081.
(c) Affidavit Record Card NLRB 1082.
(d) Instructions to Unions NLRB 1083.

INTRODUCTION

Compliance with Section 9 (f), (g) and (h) is a condition precedent to either processing a 9 (c) (1) (A) petition, *entertaining* a 9 (e) (1) petition or issuing a complaint. It is *not* a bar to *receiving* a petition or a charge but, to prevent accumulations of petitions and charges on which no action may be taken until eligibility is established, a limited period for compliance has been set. In every such instance, the petitioning or charging union will be notified at the time of filing, that it will be allowed *not to exceed 10 days* in which to complete its eligibility. This will be the limit unless further time is authorized by Washington. Such authorization will be given only for good reason shown. Without such authorization, the petition or charge must be dismissed at the expiration of 10 days and the case closed.

The files of statements required in Section 9 (f) and (g) will be kept at the Department of Labor office for the registration of labor organizations in Washington. Certificates showing compliance with Section 9 (f) and (g) will be issued by that department to the local or other union only when requested by such union. The regional offices of the NLRB will not initiate such requests; they may, however, request the Washington office to ascertain filing information from the Labor Department. You will note on the original petition or charge, the compliance number and its expiration date, both of which will appear on the face of the certificate.

The file of non-communist affidavits will be kept at the National Labor Relations Board in Washington, but each regional office will maintain a file of affidavit record cards containing the data that pertains to the qualified labor organizations in their region. It is contemplated that most of the non-communist affidavits will be filed with the regional offices. When this occurs, the regional office will abstract the information to their affidavit record cards and forward the original affidavits to Washington. (Refer to statement of procedure, forms, etc.)

Since the mere filing of affidavits by a local is not sufficient, Washington will keep all regions advised when affidavits have been received from the American Federation of Labor, Congress of Industrial Organizations and any other similar central organizations and also from each of the National or International Unions, so that your abstract cards may show the chain of qualification down to the local. If the AF of L, CIO or other such organiza-

tion, or if the parent International should fail to qualify, all subordinate organizations are disqualified.

In maintaining the affidavit record cards, great care must be exercised to see that none of the qualifications have expired. An affidavit is good for only one year.

If your affidavit record cards indicate disqualification, it will be safer to check with Washington before taking action.

When affidavits of a local are filed direct with Washington, the abstracted information will be forwarded to you promptly.

These registrations are all absolute conditions precedent to our jurisdiction. They must be accurately checked in every instance.

If an affidavit is filed with you in defective form, do not accept it but return for correction.

The term "officers" shall include all persons described as "officers" in the International, National and/or local constitutions and by-laws.

It is suggested that you obtain, if possible, copies of the constitutions, retaining one for your use and forwarding one copy to Washington. You will see that these are complete and that with this affidavit, *all* the affidavits of the officers listed are filed. The affidavits *must be sworn to before a Notary Public.* Officials of the Board will not administer these oaths unless they are Notaries Public and have a seal.

### Compliance With Labor Department Registration Requirements

*Legal Requirement.* Subsections 9 (f), and 9 (g) of the Act as amended requires that a labor

organization file information with the Department of Labor before the Board may take any affirmative action in behalf of such organization. Further information regarding the interpretation of Subsections 9 (f) and (g) is being issued in other instructional material.

*Compliance Procedure.* Arrangements have been worked out with the Department of Labor whereby unions complying with Subsections 9 (f) and 9 (g) are furnished with a letter indicating compliance with these provisions and providing the union with a compliance number as evidence of compliance. Unions filing petitions or charges with the Board are required to show on the petition or charge form the compliance number and its date of expiration.

Unions wishing to furnish the Board with evidence of compliance with the registration requirements either after a charge or petition has been submitted or desiring to furnish such evidence separate from a charge or petition, are required to include the name of the union, the compliance number, and the date of expiration of the compliance in affidavit form sworn to before a notary public or Board Agent by a responsible union official. This procedure will be necessary when a previous compliance number has expired while a case is in process or when a union wishes to record its compliance with the Board after a case has been placed on file without evidence of compliance.

*Validity of Evidence of Compliance.* Field offices are to accept sworn affidavits of compliance with Subsections 9 (f) or 9 (g) (either submitted separately or included as part of the charge or petition) as sufficient evidence of compliance to

warrant investigation and final action in any case. Processing of a case should be discontinued only when compliance expires or information is received either from the General Counsel's Office, the Department of Labor, or the Department of Justice that evidence of compliance is false.

FILING LOYALTY AFFIDAVITS

*Legal Requirements.* Subsection 9 (h) of the Act as amended requires that before the Board may investigate a petition under Subsection 9 (c) or entertain a petition under Subsection 9 (e) or issue a complaint based on the charge of a labor organization there must be on file with the Board "an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Further information regarding the interpretation of Subsection 9 (h) is being issued in other instructional material.

*Affidavit Forms.* Unions desiring to comply with Subsection 9 (h) are to file affidavit form NLRB 1080 certifying as to the names of the officers of the union. Each officer named in NLRB 1080 is to complete affidavit form NLRB 1081. Affidavit forms NLRB 1081 for the officers of a union should

be accompanied by an NLRB 1080 form whenever submitted.

*Where Unions File.* Local unions are to file affidavit forms NLRB 1080 and 1081 with the Regional or Sub-Regional Office which would normally act on its cases. A local union filing cases in more than one office need file with one office only. In such instance, the union should request that the office with which it has filed inform the other office of its compliance with this Subsection.

All national, international, and parent labor organizations (AFL, CIO, etc.) should file affidavit forms with the Washington Office of the Board.

*When Unions File.* Initially unions will probably file loyalty affidavit forms at the time a charge or petition is filed, but once an officer has filed an affidavit such affidavit need not be renewed for 1 year. (The 1-year period is calculated from the date of execution of the affidavit). There are a number of circumstances when during the course of processing a case, it is necessary for a union to file a new form NLRB 1080 alone or accompanied by one or more NLRB 1081 forms as the situation requires, to permit completion of action on the case. New affidavit forms must be filed under the following circumstances:

1. The 1-year period during which the affidavits are valid expires.

   In this case a new NLRB 1080 form and a new NLRB 1081 form for each officer must be executed and filed.

2. The term of office of one or more of the officers of the union expires but all officers are reelected to

a new term so that there is no change in officers of the union.

A new form NLRB 1080 must be filed showing the expiration dates of the new terms of office being served by the officials. New NLRB 1081 forms are unnecessary since the previous ones are valid for the balance of the 1-year period.

3. A union officer is succeeded by a new officer.

In this case, a new NLRB 1080 and an NLRB 1081 for each officer for whom there is not a valid NLRB 1081 on file with the Board must be executed and filed with the Board.

CONTROL PROCEDURES—FIELD OFFICES

*Review of Affidavit Forms.*—When the loyalty affidavit forms for a union are received by a Regional Office they should be reviewed with the following factors in mind:

1. Are all items of information furnished which are required by the forms?
2. Are the forms properly notarized?
3. Have any of the expiration dates already expired?
4. Is there an NLRB 1081 for each officer whose name is listed on the NLRB 1080 or do Regional Office records show that for each officer who has not submitted an NLRB 1081 at this time there is a valid form on file with the Board?

Upon completion of review of such forms, the person responsible in the Regional Office should (a) make necessary recordings in the field office

affidavit record file, (b) staple the NLRB 1081 forms to the NLRB 1080, (c) write in the lower right hand corner of form NLRB 1080 the region number and the earliest date at which a new NLRB 1080 will be required (see section above "When Unions File"), (d) initial the NLRB 1080 in the lower right hand corner, and (e) forward the complete set of forms to the Washington Office via registered mail.

*Preparation of Affidavit Record Card, NLRB 1082.* An NLRB 1082 form will be prepared by the Regional or Sub-Regional Office at the time the union files its first petition or charge or submits loyalty affidavits required for compliance with Section 9 (h) of the Act as amended. Once such a form is prepared its use is continued although additional petitions and charges have been filed, or revised loyalty affidavits submitted.

Information for entry on this form is provided as follows:

1. Secure from the charge or petition the Department of Labor Compliance number, expiration date of compliance number, name of national or international and name of parent organization (AFL, CIO, etc.).

2. Secure from the NLRB 1080 form the names of the local union officers, and the expiration dates for their terms of office.

3. Secure the expiration date for each individual officer's affidavit by reference to his NLRB 1081. (This date is 1 year from the date of execution of the affidavit.)

4. The "renewed" boxes on NLRB 1082 are for

insertion of information at a later date showing changes since the previous submission.

5. Of paramount importance in the operation of this record is the box entitled "Earliest Expiration Date." This date is determined by comparing all of the "expiration dates" shown on both sides of the card (including dates of expiration of term of office, compliance number, and loyalty affidavits) and selecting the one which will be reached first.

6. The case number of all "active" cases in which the local union is involved is recorded in the "Case Number" box.

*Notification of Other Field Offices.* If a union files the necessary forms for compliance with Subsection 9 (h) and indicates that it wishes other field offices notified of such compliance in order that cases filed by the union might be processed by such offices, the office with which the necessary forms have been filed should proceed as follows:

1. Enter on a copy of NLRB 1082 for each office to be notified all information required thereon which is available from the NLRB 1080 and 1081 forms.

2. Have the Regional Director or Examiner-in-Charge certify on the bottom of the affidavit record card that it is a true record of compliance with Subsection 9 (h).

3. Forward by registered mail to the field offices to be notified the certified copy of the affidavit record card.

*Maintenance of NLRB 1082 Forms.* There are to be two files of affidavit record cards in each field

fice, one file for unions having active cases (i.e., ppropriate certification or issuance of complaint each case has not been made) and one file for nions who do not have "active" cases. Both files e to be kept in alphabetic sequence by name of rent organization (AFL, CIO, etc.) and national international and numerically by local union mber within national or international. If local nions do not have numbers their cards should be ed alphabetically. The system of alphabetization ould be the one used in the *Directory of Labor nions in the United States,* U.S. Department of bor Bulletin No. 901 (May, 1947) a copy of ich is being furnished each field office.

The "active" cards are to be filed in visible record s and a tab is to be placed over the position on card for the *month* of the earliest expiration te. Two distinct colors should be used for tabs, ch color for alternate months. For example, for January expiration dates use a black tab, Febru- y a red tab, March a black tab, April a red tab, c.

In setting up the initial file of these forms plenty space should be left for expansion so as to reduce e amount of shifting of records which might herwise prove to be necessary.

Whenever a complaint case is closed, a certifica- n of bargaining representatives is made, or cer- ication made under Section 9 (c), such fact is dicated by crossing off the case number on the rd. Whenever all case numbers on a card are ossed out or whenever compliance with Subsec- ns 9 (f), (g), and (h) expire the card should be thdrawn from the "active" file and placed in

the "inactive" file. The "inactive" cards are to be filed in regular vertical file drawers.

*Checking Charges and Petitions for Compliance with Subsections 9 (f), (g) and (h).* All incoming petitions and charges must be checked for compliance with Subsections 9 (f), (g) and (h). This involves two steps as follows:

(a) Checking the Affidavit record cards when completed to see that the local union is in compliance with Subsections 9(h) and that the local, national, international and parent organizations are in compliance with Subsections 9 (f) and (g).

(b) Checking the distribution list from Washington to see that the national, international and parent organizations are in compliance with Subsections 9 (h). (See below *Distribution of Records on Nationals, Internationals and Parent Labor Organizations (AFL, CIO, etc.)).*

When this check is made and it is clear that the requirements of Subsections 9 (f) (g) and (h) are met, the clerk in charge of such work should initial the petition or charge after "9 (f) (g) and (h) cleared" in the box entitled "Do not write in this space."

*Follow-up on "Earliest Expiration Dates."* On the first day of each month the clerk responsible for the affidavit record files in the field office is to withdraw those cards from the "active" file in which the earliest expiration date is during the following month. (That is, on September 1 the cards having expiration dates before October 31, will be examined.) The withdrawal of these cards will be

facilitated by reference to the tabs. These cards will be arranged in order of earliest expiration date, and the union affected notified by form letter of the circumstances. If the expiration date arrives without appropriate renewal the field office staff member to whom the case has been assigned will be instructed to cease activity on the case as of the expiration date until notice of renewed compliance is received. If the case has been transferred to Washington, the Office of the General Counsel will be notified by a teletype showing the name of the union and the case number.

WASHINGTON OFFICE RECORDS

*Distribution of Records on Nationals, Internationals, and Parent Labor Organizations (AFL, CIO, etc.).* The officers of National, International and parent labor organizations are required to file affidavit forms NLRB 1080 and 1081 with the Administrative Division in the Washington Office of the Board. The Administrative Division maintains a record of such affidavits and prepares periodic reports to field offices showing the names of the labor organizations which have complied with the provisions of Subsection 9 (h). Field offices are notified immediately by teletype of any change in the compliance status of such a union organization. It is the responsibility of field office directors to keep his staff members handling cases informed of the compliance status of national, international, and parent labor organizations with which each local union having cases on file is affiliated.

*Maintenance of Affidavit Files.* It is the responsibility of the Administrative Division to re-

ceive and maintain for ready reference all affidavit forms NLRB 1080 and 1081 filed either in the field or in Washington. A separate manila folder is established for each labor organization endeavoring to comply with Subsection 9 (h). The NLRB 1080 affidavits are fastened to the left side and the NLRB 1081 affidavits are attached to the right side of such folders. These folders are kept in a locked file room and are arranged in alphabetic sequence by title of parent organization and national and international, and in numerical sequence within national and international. Local unions not having a number will be filed in alphabetic sequence.

*Maintenance of Reference Records.* In addition to the affidavit files the Administrative Division prepares and keeps up to date a flexoline record showing the earliest expiration date of affidavits filed by unions complying with Subsection 9 (h) of the Act. These strips are to be arranged in the same sequence as the affidavit files, and are to show the name and number of the labor organization, the office in which the affidavits were originally filed and the earliest expiration date.

*Availability of Information.* Members of the general public desiring information as to whether a union has complied with Subsection 9 (h) of the Act should contact the Information Division. This office will contact the Administrative Division to secure the necessary information. Normally information as to whether a specific person has signed such an affidavit will not be disclosed.

APPENDIX C

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

SEC. 3. * * *

* * * * *

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

SEC. 9. * * *

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining

and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such em-

ployees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and

allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms; (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disburse-

ments made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section

10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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SEC. 10. * * *

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(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided,* That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such

charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. * * *

* * * * *

(e) * * *. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

The relevant provisions of the Rules and Regulations and Statements of Procedure of the National Labor Relations Board are as follows:

SEC. 102.13. * * *

* * * * *

(b) For the purpose of these rules and regulations, compliance with section 9 (h) of the Act means in the case of a national or international labor organization, that it has filed with the general counsel in Washington, D. C., and in the case of a local labor organization, that any national or international labor organization of which it is an affiliate or constituent body has filed with the general counsel in Washington, D. C., and that the labor organization has filed with the regional director in the region in which the proceeding is pending:

(1) A declaration by an authorized representative of the labor organization, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, listing the titles of all offices of the filing organization and stating the name of the incumbent, if any, in each such office and the date of expiration of each incumbent's term.

(2) An affidavit by each officer referred to in subparagraph (1) of this paragraph, executed contemporaneously with the charge (or petition) or within the preceding 12-month period, stating that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

* * * * *

SEC. 102.52. *Petition for certification or decertification; who may file; where to file; withdrawal.*—A petition for investigation of a question concerning representation of employees under paragraphs (1) (A) (i) and (1) (B) of section 9 (c) of the act hereinafter called a petition for certification may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1) (A) (ii) of section 9 (c) of the act, alleging that the individual or labor or-

ganization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. When any such petition is filed by a labor organization, no investigation shall be made of any question of representation raised by such labor organization unless such labor organization is in compliance with the requirements of section 9 (f), (g), and (h) of the act, within the meaning of section 102.13. * * *

* * * * *

Statement of Procedure:

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SEC. 101.3 *Compliance with section 9 (f), (g), (h) of the act.*—(a) If a charge (or petition) is filed by a labor organization, that labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9 (f) (b) (2) of the act. At the time of filing the charge (or petition) or prior thereto, or within a reasonable period of time thereafter not to exceed 10 days, the labor organization must present the duplicate copy of a letter from the United States Department of Labor showing that it has filed the material required under section 9 (f) and (g) of the act and a declaration executed by an authorized agent stating the labor organization has complied with section 9 (f) (b) (2) and setting

forth the method by which compliance was made.

(b) In addition, the labor organization and every national or international labor organization of which it is an affiliate or constituent unit must have complied with section 9 (h) of the act as follows: At the time of filing the charge (or petition) or prior thereto, or within a reasonable period not to exceed 10 days thereafter, the national or international labor organization shall have on file with the general counsel in Washington, D. C., and the local labor organization shall have on file with the regional director in the region in which the proceeding is pending, or in which it customarily files cases, a declaration by an authorized agent executed contemporaneously or within the preceding 12-month period listing the titles of all offices of the filing organization and stating the names of the incumbents, if any, in each such office and the date of expiration of each incumbent's term, and an affidavit from each such officer, executed contemporaneously or within the preceding 12-month period, stating that he is not a member of the Communist Party or affiliated with such party and that he does not believe in, and is not a member of nor supports any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

* * * * *

SEC. 101.16 *Initiation of representation cases.*—The investigation of the question as

to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present to him a claim to be recognized as the exclusive bargaining representative.* * * If the petition is filed by a labor organization, no investigation will be made of any question of representation raised by such labor organization unless such labor organization is in compliance with section 9 (f), (g), and (h) of the act. (See section 101.3.) * * *

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APPENDIX D

Budget Bureau No. 64-R001.1
Approval Expires Nov. 30, 1949

Form NLRB-501
(12-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

# CHARGE AGAINST EMPLOYER

IMPORTANT—READ CAREFULLY

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 36-CA-100

Date Filed 8-3-49

Compliance Status Checked By: /s/ MK

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

NAME OF EMPLOYER: DANT & RUSSELL

NUMBER OF WORKERS EMPLOYED: 60

ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State): REDMOND, OREGON

NATURE OF EMPLOYER'S BUSINESS: LUMBER MANUFACTURING

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Said employer on or about July 18, 1949, discharged Max Gossner and H.J. Christopherson, and at all times since said date have refused to reinstate or re-employ them, all because of their membership and activities in the undersigned union.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge

International Woodworkers of America, Local 647

4. Address (Street and number, city, zone, and State): Box 384, 933 Bond Street, Bend, Oregon — Telephone No.: 1035

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Woodworkers of America

6. Address of National or International, if any (Street and number, city, zone, and State): Governor Building, Portland, Oregon — Telephone No.: Br. 5687

## 7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ W. A. Babcock
(Signature of representative of person filing charge)

William A. Babcock, Attorney
(Title, if any)

8/3/49
(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

U. S. GOVERNMENT PRINTING OFFICE 16—87660-6